81-2096

No. 81-

Office - Supreme Court, U.S.
FILED
MAY 10 1982
ALEXANDER L. STEVAS,
CLERK

In the Supreme Court of the United States

October Term, 1981

JAMES J. CLANCY, GORDON BRICKEN, JAMES E. WARD, DAVID L. BRANDT, and DAVID F. ORTIZ,

Petitioners,

v.

JARTECH, INC., ANATUNA, INC., CINEMA 7, INC., MOOKS, INC., all California corporations, JAMES MITCHELL, ARTIE MITCHELL, and MITCHELL BROTHERS FILM GROUP, a general partnership,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

James J. Clancy
9055 La Tuna Canyon Rd.
Sun Valley, CA 91352
(213) 352-2069

Attorney for Petitioners.

QUESTIONS PRESENTED

1. Whether the trial court erred in its Conclusion of Law that the Federal Copyright Law makes no provision for the exclusion of obscene matter from its protection?

2. Whether the trial court erred in its Conclusion of Law that it had no jurisdiction to make a declaratory judgment on the issue of the obscenity of the six films.

3. Whether the Declaratory Judgment Counterclaim stated a claim upon which relief can be based; that is, whether a governmental agency can ensure a decision on a rule of law necessary to its defense in civil litigation, here the validity of the Certificate of Registration of a Claim to Copyright issued to the producer of

films held to be obscene under federal standard, by raising the issue affirmatively by way of a counterclaim.

(A) Whether the trial court erred in its judgment that the declaratory judgment counterclaim was rendered moot by the verdict of the jury.

4. Whether the trial court had jurisdiction to authorize the forfeiture of a motion picture film, adjudged to be obscene under federal standards in civil proceedings in that Court, as ancillary relief to a copyright infringement complaint brought by the film producers or a declaratory judgment counterclaim brought by a law enforcement agency.

SUBJECT INDEX

QUESTIONS PRESENTED..... i

PETITION FOR WRIT OF CERTIORARI..... 1

OPINION BELOW..... 2

JURISDICTION..... 2

STATUTORY PROVISIONS INVOLVED..... 3

STATEMENT OF THE CASE..... 4

STATEMENT OF THE FACTS..... 5

SUMMARY OF ARGUMENT.....23

REASONS FOR GRANTING THE WRIT.....28

INTRODUCTION.....28

I

THE TRIAL COURT ERRED IN ITS CONCLUSION OF LAW THAT THE FEDERAL COPYRIGHT LAW DOES NOT EXCLUDE OBSCENE MATTER FROM ITS PROTECTION.....34

II

THE TRIAL COURT ERRED IN ITS CONCLUSION OF LAW THAT IT HAD NO JURISDICTION TO MAKE A DECLARATORY JUDGMENT ON THE ISSUE OF OBSCENITY VEL NON.....36

III

THE DECLARATORY JUDGMENT COUNTERCLAIM STATED A CLAIM UPON WHICH RELIEF CAN BE BASED, IN THAT PLAINTIFFS' FIRST AMENDED COMPLAINT IN THE COPYRIGHT

INFRINGEMENT LAWSUIT DID NOT ASSURE A RESOLUTION OF ALL LEGAL ISSUES DEEMED BY THE DEFENDANT GOVERNMENTAL AGENCY TO BE NECESSARY TO A COMPLETE RESOLUTION OF THE CONTROVERSY; SUCH AS, WHETHER PLAINTIFFS' "CERTIFICATES OF REGISTRATION OF A CLAIM TO COPYRIGHT" REPRESENTED VALID CLAIMS TO COPYRIGHT FOR THE FILMS NAMED IN SUCH COMPLAINT.....40

(A) THE CONTROVERSIES WHICH WERE STATED IN THE COUNTERCLAIM WERE NOT MOOTED BY THE JURY VERDICTS....44

(B) THE COUNTERCLAIM ADDED NEW PARTIES, WHOSE RIGHTS AND OBLIGATIONS WERE NOT ADJUDICATED BY THE JURY VERDICTS.....46

(C) THE COUNTERCLAIM ADDED A SIXTH FILM. THE COPYRIGHT STATUS OF "C.B. MAMAS" (AND THE OTHER FIVE FILMS WHICH WERE NAMED IN THE COMPLAINT) WAS ... PROPERLY RAISED IN THE COUNTERCLAIM UNDER THE DECLARATORY JUDGMENT ACTION.....47

(D) WHERE FACTS TEND TO INDICATE THAT GENUINE ISSUES OF MATERIAL FACT EXIST AND ESTABLISH A CASE OR CONTROVERSY BETWEEN THE PARTIES, UNDER RULE 56(c), F.R.C.P., THE COUNTERCLAIM CANNOT BE DISMISSED...49

(1) THE RE-EXHIBITION OF CERTAIN SUBJECT FILMS ESTABLISHES A CASE OR CONTROVERSY.....50

(2) THE FILING OF A FEDERAL CIVIL RIGHTS ACTION BY CERTAIN COUNTERDEFENDANTS AGAINST THE COUNTERCLAIMANTS AND OTHERS,

INVOLVING IN PART THE SAME CLAIMS AND ARISING OUT OF THE SAME OCCURRENCES AS ARE PRESENTED IN THE COUNTERCLAIM, ESTABLISHES THE EXISTENCE OF A CASE OR CONTROVERSY.....51

(3) A PRESENT AND CONTINUING ACTUAL CONTROVERSY EXISTS BETWEEN PETITIONER CLANCY AND THE RESPONDENTS AS TO THEIR RESPECTIVE RIGHTS, DUTIES AND OBLIGATIONS IN RELATION TO SUCH FILMS.....51

IV

A FEDERAL COURT HAS EQUITABLE JURISDICTION TO AUTHORIZE THE FORFEITURE OF OBSCENE MATERIALS WHICH PLAINTIFFS VOLUNTARILY PLACE UNDER THE COURT'S CONTROL INCIDENT TO COPYRIGHT INFRINGEMENT LITIGATION WHICH THOSE PLAINTIFFS HAVE INITIATED, OR INCIDENT TO THE GOVERNMENTAL AGENCY'S DECLARATORY JUDGMENT COUNTERCLAIM.....53

(A) THE U.S. DISTRICT COURT, HAVING JURISDICTION OVER THE "RES" AND ALL PERSONS IN CONTROL THEREOF, HAS THE RIGHT TO USE ITS EQUITABLE POWERS TO PREVENT THE IRREPARABLE HARM WHICH IS CERTAIN TO RESULT FROM TRAFFIC IN HARD-CORE PORNGRAPHY.....55

(B) EVEN WERE THE COPYRIGHT LAWS FOUND TO BE INADEQUATE TO AUTHORIZE THE FULL RELIEF HEREIN REQUESTED, THE FEDERAL DISTRICT COURT IS AUTHORIZED TO GRANT SUCH RELIEF IN THE DECLARATORY JUDGMENT COUNTERCLAIM UNDER GENERAL PRINCIPLES GOVERNING FEDERAL PUBLIC NUISANCE LAW.....58

CONCLUSION.....64

INDEX TO APPENDICES

APPENDIX

A Opinion of the United States Court of Appeals, Ninth Circuit.....A1-22

B Judgment Re: Counterclaim; and Findings of Fact and Conclusions of Law Re: Counterclaim.....B1-3

C Defendants' Amended Counterclaim; and Plaintiffs' and Counter-Defendants' Answer to Amended Counterclaim.....C1-49

D Time and Motion Studies of 6 Motion Picture Films.....D1-185

TABLE OF AUTHORITIES CITED

Cases

Altwater v. Freeman, 319 U.S. 359, 363....48

Bond v. Floyd, 385 U.S. 116.....45

Bora v. Mitchell Bros. Film Group et al. 445 U.S. 917 (March 3, 1980).....29

Charger v. Tennessee Copper Co., 206 U.S. 230.....61

Commonwealth v. Holmes, 17 Mass. 336.....58

Commonwealth v. Sharpless, 2 S and R (Penn.) 91.....59

Cooper v. Mitchell Brothers Santa Ana Theater et al. ___U.S.___ 70 LEd2 262...32

Hayburn's Case, 2 Dall. 409.....45

Illinois v. City of Milwaukee
406 U.S. 91.....60

International Longshoremen's &
Warehousemen's Union v. Kuntz
334 F.2d 165.....49

James Phalen v. Commonwealth of Virginia,
12 L.Ed. 1030, 1033 (1850).....30,59
61

Jartech Inc. et al. v. Clancy, et al.
CA. No. 79-3087.....24,25
35,37

Jartech Inc. et al. v. Clancy, et al.
CA No. 80-5016.....1,5,23

Jartech Inc. et al v. Clancy, et al.
666 F.2d 403.....2

Kingsley Books Inc. v. Brown,
354 U.S. 436, 448.....25,39

Missouri, Kansas & Texas R. Co. v. Ferris,
179 U.S. 602.....45

Mitchell Bros. Film Group and Jartech Inc.,
v. Cinema Adult Theater,
193 U.S. P.Q. 138.....29

Mitchell Bros. Film Group et al. v. Cinema
Adult Theater, 604 F.2d. 852.....29

Monell v. New York City Dept. of Social
Service, 436 U.S. 658.....42

Mugler v. Kansas, 123 U.S. 205.....59

Muskrat v. U.S., 219 U.S. 346.....45

North Carolina v. Rice, 404 U.S. 244.....44

Oil Workers Unions v. Missouri, 361 U.S. 363.....45

Owen v. City of Independence, Missouri et al., 445 U.S. 622, (April 16, 1980).....42

Paris Adult Theater I v. Slaton, 413 U.S. 49.....62

People v. Birch, All State News et al. 269 N.Y.S.2d 752.....39

People ex rel. Busch et al. v. Projection Room Theater et al., 17 Cal.3d 42.....61

Powell v. McCormick, 395 U.S. 486.....45

Regina v. Hicklin L.R. 3 Q.B. 36.....38

Rex v. Curl, 2 Strange 789 (1727).....30

Roth v. U.S., 354 U.S. 475.....37,38 64

St. Pierre v. U.S., 319 U.S. 41.....45

Sedley's Case, 1 Sid 168.....30

Smith v. U.S., 362 F.2d 366.....49,50

State of Florida v. Samscot Enterprises Inc., 297 So.2d 69.....56

United Public Workers v. Mitchell, 330 U.S. 75.....45

U.S. v. Dennett, 39 F2d 564.....39

U.S. v. Kennerley, 209 F2d 119 (S.D.N.Y. 1913).....37

U.S. v. Levine, 83 F.2d 156 (1936).....25,38

U.S. v. 37 Photographs, 402 U.S. 363...30,54
57

U.S. Marketing v. State of Idaho,
No. 81-741.....34

United States Galvanizing & Plant Equipment
Corp. v. Hanson-Van Winkle-Munning Co.,
104 F.2d 856.....48

Warsaw v. Eastman Kodak Co.,
252 S.E.2d 182.....57

Yardly v. Houghton Mifflin Co.,
108 F.2d 28.....48

CONSTITUTION, TREATIES, STATUTES,
ORDINANCES, RULES

Federal Rules of Civil Procedure:
Rule 12(c).....49
Rule 41(a)(2).....12
Rule 56(c).....49
Rule 65.....57

17 United States Codes
Section 1.....30
Section 506(c).....55

19 United States Codes
Section 1305.....57

28 United States Codes
Section 1254(1)..... 3
Section 1338(a).....54
Section 2201.....54
Section 2202.....55,58

Rules of the U.S. Supreme Court
Rule 17.1(a)..... 3
Rule 17.1(c)..... 3

Santa Ana Ordinance N. S.-1287.....10

Santa Ana City Council Resolution
76-134.....12

50 A.L.R. Fed. 786.....29

TREATISES, ETC.

Joyce, Law of Nuisances, Section 354.....59

41 Opinions of the U.S. Attorney General,
No. 73 (1958).....33,40

Wood, H.G., The Law of Nuisances,
Section 23, 24, 57, 65, 743.....58,59

In the Supreme Court of the United States

October Term, 1981

JAMES J. CLANCY, GORDON BRICKEN, JAMES E. WARD, DAVID L. BRANDT, and DAVID F. ORTIZ,

Petitioners,

v.

JARTECH, INC., ANATUNA, INC., CINEMA 7, INC., MOOKS, INC., all California corporations, JAMES MITCHELL, ARTIE MITCHELL, and MITCHELL BROTHERS FILM GROUP, a general partnership,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

The petitioners respectfully pray that a Writ of Certiorari be issued to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit in Jartech, Inc., et al. v. Clancy, et al., C.A. No. 80-5016, entered on January 25, 1982, which affirmed the judgment of the trial court dismissing the counterclaim of

James J. Clancy, Gordon Bricken, James E. Ward, David L. Brandt and David F. Ortiz.

OPINION BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit is reported in Jartech, Inc., et al. v. Clancy, et al., 666 F.2d 403. A copy of the opinion of the Court of Appeals appears at Appendix A-1 to A-22 to this petition. A copy of the trial court's judgment re counterclaim, filed November 19, 1979, and a copy of the findings of fact and conclusions of law re Counterclaim, filed November 19, 1979, appears at Appendix B-1 to B-5.

JURISDICTION

The opinion of the Court of Appeals was filed on January 25, 1982. On April 12, 1982, Justice Rehnquist signed an order extending the time for filing a petition for

writ of certiorari to and including May 10, 1982. This Court's jurisdiction is invoked under 28 U.S.C. Section 1254(1) and Rule 17.1(a) and 17.1(c) of the U.S. Supreme Court.

STATUTORY PROVISIONS INVOLVED

The text of the following statutes, constitutional provisions, and treaties is set forth at Appendix E-1 to E-30 to the Petition for Writ of Certiorari to review the Judgment and Opinion in Jartech, Inc., et al. v. Clancy, et al., C.A. No. 79-3087 on plaintiff's appeal from the judgment entered in the trial court on the special verdicts returned by the jury; concurrently filed with this petition: U.S. Constitution, Art. 1, Section 8, Cl. 8; 17 U.S.C. Section 1 (July 30, 1947); 17 U.S.C. Section 5 (July 30, 1947); 17 U.S.C. Section 11 (July 30, 1947); 17 U.S.C. Section 101

(July 30, 1947); 17 U.S.C. Section 116 (July 30, 1947); 17 U.S.C. Section 209 (July 30, 1947); 17 U.S.C. Section 102 (1976); 17 U.S.C. Section 106 (1976); 17 U.S.C. Section 107 (1976); 17 U.S.C. Section 410 (1976); 17 U.S.C. Section 505 (1976); 1911 "Agreement for the Suppression of the Circulation of Obscene Publications", 37 Stat 1511-1515.

STATEMENT OF THE CASE

This is one of three petitioners seeking review of the separate appeals from the three trial court judgments in this copyright infringement lawsuit. The petition herein seeks the reversal of the trial court's judgment which dismissed the Defendants' declaratory judgment counterclaim for failure to state a claim upon which relief can be granted and as having been rendered moot by the verdicts of

the jury, which were entered for the defendants in the copyright infringement lawsuit. On the defendants appeal in Clancy, et al. v. Jartech, Inc., et al., C.A. #80-5016, the trial court's Judgment re Counterclaim was affirmed.

STATEMENT OF FACTS

Petitioners/counter-claimants Bricken, Ward, Brandt and Ortiz are Santa Ana City Councilmen, named as individuals and sued for money damages in the underlying copyright infringement lawsuit. Petitioner/counter-claimant Clancy is an Attorney, employed by the Santa Ana City Attorney and City Council in November of 1975 to perform legal services in public nuisance abatement litigation involving the Mitchell Brothers' Santa Ana Theater and obscene motion pictures which have been exhibited on a daily basis at that theater

since September of 1975. Clancy also was named as an individual, and sued for money damages.

Respondents/counter-defendants James Mitchell and Artie Mitchell are producers, distributors, and exhibitors of six motion pictures: "Behind the Green Door", "Resurrection of Eve", "Sodom and Gomorrah", "Inside Marilyn Chambers", "The Autobiography of a Flea", and "C.B. Mamas" which were exhibited at the Mitchell Brothers' Santa Ana Theater and which Petitioners claim are obscene under any standard. See Appendix D-1 thru D-185 to the Petition. (C.R. 64, 68.) Respondents/ counter- defendants Jartech, Inc., Anatuna, Inc., Mooks, Inc., and Cinema 7, Inc., are closely held California corporations, controlled by James and Artie Mitchell, which are the corporate authors and producers of such motion pictures. After their production, said corporations applied

to the Copyright Office for, and were issued a "Certificate of Registration of a Claim to Copyright" for each of the six films (C.R. 64, 68). Respondent/counter-defendant Mitchell Brothers Film Group is a general partnership of James Mitchell and Artie Mitchell (each of which owns 50%) which owns the distribution rights and distributes such films nationally and throughout the world (C.R. 64, 68).

Since 1969, Petitioner Clancy has specialized in civil obscenity public nuisance abatement litigation. At that time, the decisions of this Court made it difficult for law enforcement to use search warrants as a means of obtaining evidence in support of criminal prosecutions involving obscene motion picture films. A number of state and federal decisions prevented the issuance of search warrants without a "prior adversary hearing" and when such films were subpoenaed for a "prior adversary hearing",

the opposing party was usually able to resist their production by claiming a constitutional right against self-incrimination. As a result an extra ordinary amount of federal civil rights litigation was filed and the cases rarely got to trial. (R.T. 577-580; 587-589.) Under the cover of that type of litigation, the trade in obscenity increased. In 1969, Clancy commenced the development of an alternative means of marshalling evidence, using still photos obtained by surreptitiously photographing the images on the motion picture screen, and recording the sound track. Such photos and sound recordings were thereafter used to produce "time and motion studies" and "continuity" evidence which were used in civil public nuisance abatement litigation as evidence of the public nuisance which existed at the theater on the date of the surveillance. (R.T. 345-356; 489-492.)

On November 20, 1975, Keith Gow, the City Attorney of the City of Santa Ana and Petitioner Clancy met to discuss those procedures. (R.T. 323.) During such meeting, Clancy discussed the evidentiary photo and sound copying procedure which had been employed in California and elsewhere in the United States since 1969. (R.T. 323-324.) He informed the City Attorney that in only one instance (R.T. 333-334) that he was aware of, had the producers of a film of that nature (hard-core pornography) ever applied for and been issued a "Certificate of Registration of a Claim to Copyright", and that film was "Behind the Green Door" then playing at the Mitchell Brothers' Santa Ana Theater in Santa Ana. He stated his opinion that the "Certificate" was invalid because, under ruling case law and a United States Attorney General opinion (R.T. 640, 733) an obscene motion picture film could not be made the subject of a

valid copyright (R.T. 447) (R.T. 639); that he had seen the film, "Behind the Green Door", and that in his opinion reasonable minds would not differ and it was hard-core (R.T. 640) (See Appendix D-1 thru D-27 to this Petition); and that if a copyright infringement action were brought, he would defend the action on the legal ground that the Certificate of Registration of a Claim to Copyright was invalid because the film was pornographic and was not entitled to a copyright (R.T. 640-641).

Thereafter, on a weekly basis, photographs and sound recordings were taken of the films being exhibited at the Mitchell Brothers Theater, and on or about September 20, 1976, 26 of such films (13 programs) were submitted to the Santa Ana City Council at an executive session, for their consideration in determining whether or not a public nuisance existed within the meaning of Santa Ana ordinance NS-1287, and

whether a civil public nuisance abatement action should be filed to abate such nuisance. Respondents learned through a newspaper report that the subject matter was being considered at such executive session by the City Council, for action under the city ordinance. (C.R. 68).

The original copyright complaint was filed on October 12, 1976, by three of the corporate plaintiffs: Jartech, Inc., Anatuna, Inc., and Cinema 7, Inc., against petitioner Clancy and the four member of the City Council and alleged a copyright interest in three of the films being considered by the City Council: "Behind the Green Door" (Jartech, Inc.), "Resurrection of Eve" (Anatuna, Inc.), and "Sodom and Gomorrah" (Cinema 7, Inc.). See Appendix D-1 thru D-97 to this Petition.

On October 26, 1976, the City Council acted by Resolution 76-134 under the Santa Ana Ordinance and ordered the City Attorney

to file a public nuisance abatement lawsuit. (Defendants exhibit O-3.)

On May 24, 1977, the date originally set for trial, Plaintiffs moved to dismiss the action pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure. In opposition to the dismissal, the Defendants asked for leave to file a counterclaim seeking a declaratory judgment that the claims to copyright were invalid. The Court denied the defendants' motion and filed its order of dismissal with prejudice, conditioned upon payment by plaintiffs of costs and attorney's fees in the amount of $9,778.76 (C.R. 38). Thereafter, Plaintiffs changed their minds and moved the Court for and was granted an order setting aside the dismissal and permitting the filing of an amended complaint (C.R. 52).

On October 3, 1977, a first amended complaint was filed which added a fourth corporate plaintiff, Mooks, Inc., and

alleged a copyright interest as producers in two additional films which had been exhibited: "Inside Marilyn Chambers" (Cinema 7, Inc.) and "The Autobiography of a Flea" (Mooks, Inc.), See Appendix D-100 thru D-133 and D-158 thru D-185, which had been issued Certificates of Registration of a Claim to Copyright (C.T. 388-407). The Complaint sought actual or statutory damages, punitive damages, recovery of all infringing copies, a permanent injunction against future infringement, and costs including reasonable attorney's fees (C.T. 394-395).

The Defendants' joint answer, filed on October 26, 1977, admitted the plaintiffs had received five "Certificates of Registration of a claim to copyright" for such films, but denied the validity of such claims and that such films were capable of being copyrighted under federal law, because they were obscene under federal law

(hard-core pornography) and constituted unlawful material which was contraband under federal law. (C.T. 418 line 7 - C.T. 425 line 6. The joint answer also set forth additional affirmative defenses of uncopyrightability of obscene subject matter, good faith acts pursuant to state law in an official capacity, immunity from suit based on legislative and quasi-judicial privilege, fair use based on a use for law enforcement purposes, and unclean hands (C.T. 426 line 5 - 428 line 21).

Pursuant to order of Court, the defendants on June 5, 1978, were permitted to file a verified amended counterclaim, see copy at Appendix C-1 thru C-48 to this Petition (C.R. 66; C.T. 512-537), which differed from the copyright infringement complaint in that it: (1) named a sixth film "C.B. Mamas", as additional subject matter in the Santa Ana controversy, with an allegation that Mooks, Inc., also claimed a

copyright interest in that film; (2) added James Mitchell, Artie Mitchell and Mitchell Brothers Film Group, a general partnership (James and Artie each owning a 50% interest) as defendants, with allegations as to the interest of each in the six films, and an allegation that they were principal and alter ego of the other defendants; and (3) sought additional relief, including a judgment against James Mitchell, Artie Mitchell and Mitchell Brothers Film Group, the general partnership, and a declaratory judgment that the 6 "Certificates of Registration of a Claim to Copyright" were invalid, that each of the films was obscene and unlawful property and contraband under the law of the United States, that the plaintiffs were not entitled to an injunction, and that all of the positive and negative prints of such films should be deposited in Court and forfeited as contraband. The counterclaim also alleged

in paragraph 34 that a present and continuing actual controversy existed between the parties regarding the status of the six copyrights and the rights, duties and obligations of each of the parties to the controversy.

On July 7, 1978, Plaintiffs/ Counter-defendants filed their answer to the counterclaim, See Appendix C-49 thru C-54. (C.R. 68; C.T. 538-543.) The answer, as verified by James Mitchell, admitted the allegations in paragraph 34 that a present and continuing actual controversy existed between the parties regarding the status of the six "Certificates of Registration of a Claim to Copyright" and the relief which each of the parties was entitled to by not pleading to the paragraph.

The case proceeded to trial on the claim and counterclaim before U.S. District Judge Laughlin E. Waters in the U.S. District Court, Central District of

California in November and December of 1978, with a jury being impaneled at the plaintiffs' request.

During Plaintiffs' case in chief, certified copies of the six Certificates of Registration of a Claim to Copyright were received in evidence as Plaintiffs' 1-6 (R.T. 646). Videotapes of the six films were shown to the Court and jury and received in evidence as defendants A-F during cross-examination of defendant Clancy (R.T. 631 line 21 - 633 line 18) (R.T. 1008 lines 12-20). Pursuant to stipulation and an order of the Court, 16mm prints of the six motion pictures were deposited with the Court on December 18, 1978, as a part of the record on Appeal and the parties stipulated that the Plaintiffs distribute the six films in interstate commerce (R.T. 1204 line 21; 1644 line 8).

Before the Plaintiffs completed their case in chief, the defendants informed the

Court that they would rest their case on plaintiffs' complaint without presenting a defense, on the grounds that the films, which had been placed in evidence during plaintiffs' case in chief, spoke for themselves (R.T. 1008-1025). Upon the conclusion of plaintiffs' case in chief on December 12, 1978, the defendants moved for a directed verdict upon the grounds that the six motion picture films were obscene per se and did not present a jury question and, as such, were uncopyrightable (R.T. 1221 line 14 - 1242 line 9). The Court heard oral arguments and denied Plaintiffs' motion. Immediately thereafter, plaintiffs rested as to the Complaint (R.T. 1332 line 23 - R.T. 1333 line 15).

Defendants/counter-claimants called defendant James Mitchell as a witness and introduced evidence on the counterclaim, and thereafter both sides rested their cases on

the counterclaim. (R.T. 1352 - 1390 line 5).

Before submitting the case to the jury on December 14, 1978, the Court bifurcated the trial and reserved the issues presented in the counterclaim, including the issue as to "C.B. Mamas", for decision by the Court after completion of the jury trial phase. (R.T. 1491 lines 1-23; R.T. 1860.) (C.T. 881.) The jury rendered its special verdict as to the five films on the same day (C.T. 863-880) that: (1) each of the five motion pictures was obscene; (2) each defendant was intentionally responsible for the copying of each motion picture; (3) none of the defendants realized any profit from the copying; (4) the use made by the defendants of the copies was a fair use; and (5) the individual defendants did not infringe the copyrights of the six motion pictures (C.R. 140 at Finding of Fact No. 6). On December 21, 1978, judgment was

entered for the defendants on the jury verdict (C.T. 882).

On December 14, 1978, after the jury verdict, the Court set a schedule for further briefing the counterclaims.

On January 9, 1979, the Defendants served and file a motion for costs taxable by Court with affidavits and points and authorities in support thereof (C.R. 101).

On January 12, 1979, Plaintiffs filed their notice of appeal to the Ninth Circuit Court of Appeals from the judgment on the jury verdict entered on December 21, 1978 (C.R. 104).

On March 22, 1979, the Court filed its "Decision and Order. for Findings of Fact, Conclusions of Law and Judgment Re Motion for Costs Taxable by the Court and Attorney's Fees" (C.R. 119).

On May 9, 1979, while Judge Waters had the Counterclaim under submission, the Counter-Defendants James Mitchell and Artie

Mitchell again exhibited at the Santa Ana Theater the film "The Resurrection of Eve", which the federal jury found to be obscene on December 14, 1978, and the film "C.B. Mamas", then pending before Judge Waters for his decision on the Counterclaim. Counter-claimants noticed a motion for a hearing on June 11, 1979, to reopen the federal case and subpoenaed the two films for that hearing (C.R. 123). On June 11, 1979, the Court denied cross-claimants' motion to reopen the trial on the counterclaim, and granted the cross-defendants' motion to quash the subpoenae (C.R. 132).

On June 29, 1979, the Court, by minute order, granted judgment against the counter-claimants on their counterclaim (C.R. 134, 135).

On October 31, 1979, the Court filed its findings of fact and conclusions of law and judgment for the defendants on their

motion for costs and attorneys fees (C.R. 140).

On November 19, 1979, the Court filed its findings of fact and conclusions of law and judgment in favor of the counter-defendants on the counterclaim (C.R. 154, 146). See copy at Appendix B-3 thru B-5 to this Petition. In its conclusions of law, the Court held: (1) the federal copyright law made no specific provision for the exclusion of "obscene matter" from its protection; (2) it did not have jurisdiction to make a declaratory judgment on the issue of obscenity vel non; and (3) it did not have jurisdiction to authorize the forfeiture of matter found to be outside the protection of the copyright laws. In its judgment, the Court held that the defendants' counterclaim was rendered moot by the verdict of the jury and that, in any event, the counterclaim failed to state a claim upon which relief could be granted.

On December 19, 1979, the counter-claimants filed their notice of appeal from the judgment in favor of the counter-defendants (C.R. 148).

In the Plaintiff's appeal in Clancy, et al. v. Jartech, Inc., et al., C.A. No. 80-5016, the Court affirmed the trial court's judgment which dismissed the Counterclaim.

SUMMARY OF ARGUMENT

The recent appearance of hard-core pornographic films on television channels and in local neighborhoods in video-cassette form should make this Ninth Circuit copyright decision granting copyright protection to such films, a matter of great concern to this Court and a substantial federal question.

Petitioners' declaratory judgment counterclaim has been used in an attempt to

force a decision on the issue of the validity of the Certificate of Registration of a Claim to Copyright so as to assure a definite ruling on a question of law of great importance to law enforcement. Both the question itself and the right to raise the question affirmatively in a counterclaim are substantial federal questions which warrant review by this Court.

1. The trial court erred in its conclusion of law that the federal copyright law does not exclude obscene matter from its protection. This identical question is presented in Petitioners' arguments in the Petition for Writ of Certiorari in Clancy et al. v. Jartech, Inc. et al., C.A. 79-3087, concurrently being filed with this Court, and Petitioner relies on those arguments in Support of Proposition of Law No. 1 in this Petition.

2. The trial court erred in its conclusion of law that it had no

jurisdiction to make a declaratory judgment on the issue of the obscenity vel non of the films in question. This identical question is presented in Petitioners' arguments in the Petition for Writ of Certiorari in Clancy et al. v. Jartech Inc. et al., C.A. 79-3087, concurrently being filed with this Court, and Petitioner relies on those arguments in support of Proposition of Law No. 2 in this Petition. The right of a Court to decide that the six films are obscene as a matter of law, is the same right possessed by a Court to decide that negligent conduct is "negligence as a matter of law". The analogy was first made by Judge Learned Hand, often called the "architect" and "father" of modern obscenity law, in U.S. v. Levine, 83 F.2 156 (1936). See, also, Justice Brennans statement on the "jury question" issue in Kingsley Books Inc. v. Brown, 354 U.S. 436, 448.

The declaratory judgment counterclaim states a claim upon which relief can be based. Plaintiffs' First Amendment Complaint in the Copyright infringement lawsuit did not assure a resolution of all legal issues deemed by the governmental agency to be necessary for a complete resolution of the controversy. The defendants therefore, had the right to affirmatively plead and prove those issues in a declaratory judgment counterclaim.

The only way to prevent a misuse of the copyright law by the producers of obscene matter is for this Court to rule that, upon the filing of a copyright infringement lawsuit by such producers, the federal court will entertain jurisdiction on all related issues raised by the defendant law enforcement agency, and will render such ancillary relief as is fair and just under the circumstances of each case.

The controversies which are stated in the declaratory judgment counterclaim were not mooted by the jury verdicts.

The counterclaim added new parties, whose rights and obligations were not adjudicated by the jury verdicts.

The counterclaim added an issue as to the copyright status of a sixth film, "C.B. Mamas'.

The Court received evidence on the counterclaim which establishes a genuine issue of fact. The motion to dismiss was thereby converted into a motion for summary judgment and the granting of the same was improper.

Plaintiffs' exhibition of the film "Resurrection of Eve" after the judgment of the Court on the jury verdicts which held it to be obscene under federal standards, and their exhibition of the film "C.B. Mamas" while the counterclaim was under submission,

establishes the existence of a continuing case and controversy as to the counterclaim.

This Court can take judicial notice that on March 12, 1980 counterdefendant Cinema 7 Inc. filed a Civil Rights Action naming the Counterclaimants as defendants, and claiming a constitutional tort and injury to property rights in the same obscene material involved herein. Such establishes the existence of a continuing case or controversy as to the counterclaim.

The evidence establishes a present and continuing actual controversy between Petitioner Clancy and the Respondents as their respective rights, duties and obligations in relation to their six films beyond the Orange County jurisdiction.

REASONS FOR GRANTING THE WRIT

A. Introduction: The Importance of the Issue.

Until 1979, it had always been considered as the law that obscene matter was not copyrightable. See the authorities relied upon by U.S. District Judge Hill (Dallas, Texas) in his opinion in Mitchell Brothers Film Group and Jartech, Inc. v. Cinema Adult Theater, 193 U.S. P.Q. 138. On October 16, 1979, a Fifth Circuit panel of judges (Godbold, Simpson, Morgan) reversed Judge Hill's decision in Mitchell Brothers Film Group, et al. v. Cinema Adult Theater, 604 F.2d 852, cert. denied in Kenneth Bora v. Mitchell Bros. Film Group, et al., 445 U.S. 917 (March 3, 1980), see also 50 A.L.R. Fed. 786, and expressed a newly announced judicial philosophy not previously found in copyright case law; namely, at page 861 that: "Two of these doctrines (judicially created defenses to infringement actions involving . . . obscene works) are largely vestige of a bygone era and need to be addressed only briefly" and that the "theory

that judges should act as conservators of the public morality" should be rejected, and "that it is inappropriate for a court, in the absence of some guidance or authorization from the legislature, to interpose its moral views between an author and his willing audience". Compare Rex v. Curl, 2 Strange 789 (1727); Sir Charles Sedley's case, 1 Sid. 168; Phalen v. Commonwealth of Virginia, 12 L.Ed. 1030, 1033 (1850); U.S. v. 37 Photographs, 402 U.S. 363 at 376. The bundle of federal property rights which attach to a copyrighted work, see 17 U.S.C. Section 1, is a matter of great importance to the producers of obscene motion picture films, as is demonstrated in a small way in this litigation, by the problems which are thrust upon law enforcement when a Certificate of a Claim to Copyright has been issued by the Copyright Office.

At the present time the manufacturers of pornographic movies are grouped in two camps: one camp, represented by the Respondent/Counter-defendants herein is advocating the registration of every pornographic movie being produced, based upon this Court's denial of a writ of certiorari in the Fifth Circuit, Mitchell Bros. Film Group case. The other camp is unwilling to run the risk of what this Court's final decision on the matter may be and prefers that its identity as a manufacturer of obscene matter should remain anonymous.

With the introduction of hard-core pornography to television channels and local neighborhoods via videocassette tapes, the impact of this Ninth Circuit's copyright decision on future television presentations should be cause for concern. See, in this regard, the Reporter's Transcript of the testimony of Investigator Robert McGuire on

June 30, 1981, at the second and third public nuisance abatement lawsuits in Santa Ana, California (No. 28-12-14 and 29-91-83), between the same parties in this lawsuit, that four (4) of the films surveilled at the Mitchell Brothers' Santa Ana Theater had appeared on "ON" television in Los Angeles County during the last six (6) months. A copy of that testimony was brought to this Court's attention in Cooper v. Mitchell Brothers Santa Ana Theater, et al., ___ U.S. ___ 70 L.Ed.2d 262 (Nov. 30, 1982) at Appendix E to the Petition for Writ of Certiorari in that case, No. 81-271.

In an effort to assure a definitive ruling on this important question so as not to be subject to the whim of the party bringing the lawsuit, as did occur in this case on May 24, 1977, when the plaintiffs moved to dismiss the original complaint when the lawsuit first came to trial (see page 12, supra), Petitioners filed a declaratory

judgment counterclaim in which they sought a ruling on the unsettled status of the rule of law which was crucial to their defense. In this regard, see the discussion in 41 Opinions of the U.S. Attorney General No. 73 (1958) that the Register of Copyrights is:

> "free to decide not to attempt to refuse or deny registration of claims to copyright in works. This conclusion does not, of course, mean that the Register should not refer to the appropriate authorities material which comes to his attention in the course of his duties as containing evidence of a violation of law. On the contrary, it is the right of all citizens to communicate such evidence to the authorities directly concerned. In re Quarles and Butler 158 U.S. 532, 535-536."

Thus far, Petitioners have been unsuccessful in their attempt to utilize a declaratory judgment counterclaim to force a decision on the validity of the Certificates of Registration of a Claim to Copyrights which is at the center of this controversy. Petitioners submit that both the "validity" question raised by them in this declaratory

judgment controversy, and the right of a defendant to raise the issue affirmatively in a counterclaim, so as to assure a definitive ruling on an important question of law, are of particular importance to law enforcement and warrant review by this Court. Compare, in this regard, the negative result recently reached in U.S. Marketing v. State of Idaho, No. 81-741 wherein an important question of law ("closure") went unanswered because of this procedural defect.

I

THE TRIAL COURT ERRED IN ITS CONCLUSION OF LAW THAT THE FEDERAL COPYRIGHT LAW DOES NOT EXCLUDE OBSCENE MATTER FROM ITS PROTECTION.

The trial court's Conclusion of Law re the Counterclaim (See Appendix B-5 to this Petition at lines 23-25) that the federal copyright law does not exclude matter which is obscene under federal standards from its

protection, presents the identical issue which is presented in the Court of Appeals' opinion reviewing the Judgment of the trial court on the jury verdicts. Arguments by the Petitioners on that issue appear in their Petition for a Writ of Certiorari as to the Judgment of the Court on the jury verdicts, concurrently being filed with this Court, in Clancy, et al. v. Jartech, Inc., et al., C.A. 79-3087 at Point I pages 21-24 under the proposition of law reading as follows:

> THE NINTH CIRCUIT ERRED IN ITS CONCLUSIONS OF LAW THAT A MOTION PICTURE FILM WHICH WAS OBSCENE PER SE UNDER FEDERAL STANDARDS WAS, NEVERTHELESS, ENTITLED TO COPYRIGHT PROTECTION UNDER FEDERAL LAW, AND THAT OBSCENITY WAS NOT A DEFENSE TO A COPYRIGHT INFRINGEMENT LAWSUIT.

Petitioners arguments which have been urged at pages 21-24 under that proposition of law are incorporated herein by reference in support of the proposition of law stated

above in Point I as to the trial court's ruling on Petitioner's counterclaim.

II

THE TRIAL COURT ERRED IN ITS CONCLUSION OF LAW THAT IT HAD NO JURISDICTION TO MAKE A DECLARATORY JUDGMENT ON THE ISSUE OF OBSCENITY VEL NON.

The trial court's Conclusion of Law re the Counterclaim (See Appendix B-5 at lines 17-19) that the court had no jurisdiction to make a declaratory judgment on the obscenity vel non of the six named films, presents the identical issue which was presented by the trial court's denial of the motion for a directed verdict upon the conclusion of the plaintiff's case in chief in the copyright infringement trial. Arguments by the Petitioners on that issue appear in their Petition for a Writ of Certiorari as to the judgment of the trial court on the jury verdicts, concurrently being filed with this

Court, in Clancy, et al. v. Jartech, Inc., et al., C.A. 79-3087 at Point I(B) at pages 44-55 under the proposition of law reading:

> THE COURT ERRED IN DENYING THE DEFENDANTS' MOTION FOR A DIRECTED VERDICT. THE FIVE MOTION PICTURE FILMS ARE HARD-CORE PORNOGRAPHY, AND, UNDER ANY STANDARD, ARE OBSCENE AS A MATTER OF LAW. THERE BEING NO GENUINE ISSUE OF FACT AS TO WHICH REASONABLE MINDS WOULD DIFFER REGARDING THE OBSCENITY OF THE FILMS, THE ISSUE IS SOLELY FOR THE DETERMINATION BY THE COURT.

Petitioners' arguments which have been urged at pages 44-55 under that proposition of law are incorporated herein by reference in support of the principle of law stated above in Point II as to the Trial Court's ruling on the Counterclaim.

Historically, the constitutional standard expressed by Justice Brennan in Roth v. U.S., 354 U.S. 476, had its genesis in an opinion written by Judge Learned Hand, United States v. Kennerley, 209 Fed. 119 (S.D.N.Y. 1913), often called the "architect" and "father" of modern obscenity

law. In that decision, Judge Learned Hand disapproved of the rule in Regina v. Hicklin, L.R. 3 Q.B. 36, and originated the rule that the determination on "obscenity" was a jury question, drawing an analogy to the standard of care in negligence cases, as a jury question.

In United States v. Levine, (1936), 83 F.2d 156, 157, Judge Learned Hand, this time speaking for the Court of Appeals in a criminal prosecution for mailing obscene circulars, called the verdict on "obscenity" a "small bit of legislation ad hoc, like the standard of care" which the court imposes upon a jury as a "duty". The Levine case was cited in with approval Roth at footnote 26.

To say that obscenity is primarily a question of fact for the jury is not to suggest, that in every instance such is the case: the Court has its proper role, as does the jury. As the jury may sometimes

overstep its bounds, United States v. Dennett, 39 F.2d 564, so also may a lower court, People v. Birch All State News, et al., 269 N.Y.S.2d 752, 754 (May 2, 1966) reversing 40 Misc.2d 626, 243 N.Y.S.2d 525 (September 6, 1963). The test which defines the respective role of the court and a jury in a civil obscenity case is similar to that stated by Justice Brennan in his dissent in Kingley Books, Inc. v. Brown, 354 U.S. 436, 448, 1 L.Ed.2d 1469, 77 S.Ct. 1325 (June 24, 1957):

> "Of course, as with jury questions generally, the trial judge must initially determine that there is a jury question, i.e., that reasonable men may differ whether the material is obscene."

Therefore, in civil actions involving the issue of obscenity, one of the basic functions of the trial court must be to determine whether the issue which is before the court is one of law or one of fact. In making that determination, the court must

decide whether the subject matter is (1) obscene as a matter of law, (2) a question of fact for the jury, or (3) constitutionally protected as a matter of law.

III

THE DECLARATORY JUDGMENT COUNTERCLAIM STATED A CLAIM UPON WHICH RELIEF CAN BE BASED, IN THAT PLAINTIFFS' FIRST AMENDED COMPLAINT IN THE COPYRIGHT INFRINGEMENT LAWSUIT DID NOT ASSURE A RESOLUTION OF ALL LEGAL ISSUES DEEMED BY THE DEFENDANT GOVERNMENTAL AGENCY TO BE NECESSARY TO A COMPLETE RESOLUTION OF THE CONTROVERSY; SUCH AS, WHETHER PLAINTIFFS' "CERTIFICATES OF REGISTRATION OF A CLAIM TO COPYRIGHT" REPRESENTED VALID CLAIMS TO COPYRIGHT FOR THE FILMS NAMED IN SUCH COMPLAINT.

Jury verdicts determined each of the five films to be "obscene". However, the legal effect of the jury's "obscenity" finding was never ruled upon by the Court, contrary to the law expressed in 41 Opinions of the U.S. Attorney General, No. 73 (1958).

The judgment on the Plaintiffs' First Amended Complaint failed to resolve the basic legal issue as to whether the five "Certificates of Registration of a Claim to Copyright" represented valid claims. The City Attorney knew of the existence of a "Certificate of a Registration of a Claim to Copyright" for the film "Behind the Green Door" prior to the City Council's having taken any official action, and acted in reliance upon prevailing law, that the validity or invalidity of such a Certificate was a legal question for the Court.

The counterclaim was specifically limited to the single legal issue of the validity of the alleged copyright claims, so that an ultimate decision regarding applicability of copyright protection to obscene films could be reached. That legal question, whether, in such cases, the legal defense of invalidity of the copyright claim was available to City Government and would

obviate the need for submission of certain fact issues to the jury, has not been rendered moot by the verdict of the jury, and has gone unanswered in both the trial court's ruling and in the opinion of the Court of Appeals on the counterclaim (which also would require the question of liability on the "fair use" defense to go to the jury). This issue has taken on increased importance with the recent decisions which have expanded municipal liability re unconstitutional action implementing a city policy ordinance. Monell v. New York City Dept. of Social Service, 436 U.S. 658 (June 5, 1978); Owen v. City of Independence, Missouri, 445 U.S. 622 (April 16, 1980).

This lawsuit was timed and designed as an attempt to slow or stop Santa Ana's efforts to end the exhibition of pornographic motion pictures at the Mitchell Brothers' Theater. The mere defeat of the plaintiffs' copyright infringement claim in

this lawsuit will not prevent their further perversion of the copyright laws. The constant threat exists that similar law enforcement efforts will result in the filing of other copyright actions. If cities are forced to undertake the expense and tribulations of defending such copyright actions without being afforded the right to achieve any affirmative relief, by way of a declaratory judgment counterclaim, litigants with interests similar to the Mitchells will succeed in their efforts to use such copyright actions to protect their unlawful films and businesses.

The only way to prevent such a misuse of the copyright laws is for this Court to rule that whenever the manufacturers of hard-core pornographic materials, which would be abatable as moral public nuisances, choose to bring the subject matter within the exclusive jurisdiction of a federal district court in a copyright action, the

federal courts will entertain jurisdiction on a declaratory judgment counterclaim by law enforcement officials as to the issue of "validity" and will grant such ancillary relief as is fair and just under the federal common law. Such a policy would end the threat of the purveyors of hard-core pornographic materials using the copyright laws to their own advantage, and would fill in a gap in the statutory scheme which was not anticipated by Congress.

(A) THE CONTROVERSIES WHICH WERE STATED IN THE COUNTERCLAIM WERE NOT MOOTED BY THE JURY VERDICTS.

The test for mootness is essentially whether the Court's decision on the merits of the case can or cannot affect the rights of the litigants. If the rights of the litigants will be affected by a decision on the merits, then the case is not moot. North Carolina v. Rice, 404 U.S. 244 (1971);

Oil Workers v. Missouri, 361 U.S. 363, 367 (1960); St. Pierre v. U.S., 319 U.S. 41, 42 (1943); Muskrat v. U.S., 219 U.S. 346, 351-53 (1911); Missouri, Kansas & Texas R. Co. v. Ferris, 179 U.S. 602, 606 (1900); Hayburn's Case, 2 Dall 409 (1792). Moreover, the mootness of a "primary" claim does not require a conclusion that all "secondary" claims are moot. Bond v. Floyd, 385 U.S. 116 (1966). This Court has stated: "Where one of several issues presented becomes moot, the remaining live issues supply the constitutional requirement of a case or controversy". Powell v. McCormack, 395 U.S. 486, 497 (1969); United Public Workers v. Mitchell, 330 U.S. 75, 86-94 (1947).

(B) THE COUNTERCLAIM ADDED NEW PARTIES, WHOSE RIGHTS AND OBLIGATIONS WERE NOT ADJUDICATED BY THE JURY VERDICTS.

In order for any judgment, including costs and attorney fees, to be effective, it must be made to run against the individuals in control of all corporate operations, namely, James and Artie Mitchell and Mitchell Brothers Film Group. Further, one of the principal reasons why the validity of the copyright can be determined by the Court in the counterclaim is the fact that all of the persons having any right, title, or interest in such "claim" are before the Court on their counterclaim. Neither James or Artie Mitchell are named as plaintiffs in the underlying action, although Plaintiffs' attorneys have stated before this court that "James and Artie Mitchell are truly the plaintiffs herein". (See R.T. at page 17, lines 12-17.) See also Plaintiffs'

objection to the introduction of Exhibit "N" (organizational chart of operations) as evidence in the action on the complaint, (R.T. 531) arguing that there was no evidence of the Mitchell Brothers' in these films, and, therefore, the exhibit was not proper cross-examination.

(C) THE COUNTERCLAIM ADDED A SIXTH FILM. THE COPYRIGHT STATUS OF "C.B. MAMAS" (AND THE OTHER FIVE FILMS WHICH WERE NAMED IN THE COMPLAINT) WAS PROPERLY RAISED IN THE COUNTERCLAIM UNDER THE DECLARATORY JUDGMENT ACTION.

The Defendants need not await the filing of a threatened suit by the Plaintiffs, who are the holders of of an alleged copyright interest in the film, "C.B. Mamas". Moreover, invalidity may be determined with or without a finding of noninfringement, and a counterclaim for a declaration of invalidity under the Declaratory Judgment Act is proper in a suit for infringement. See, generally, 26 C.J.S.

Section 139 at 327-33; Altwater v. Freeman, 319 U.S. 359, 363; United States Galvanizing & Plating Equipment Corp. v. Hanson-Van Winkel-Munning Co., (CCA 4th) 104 F.2d 856; Yardley v. Houghton Mifflin Co., (CCA 2d) 108 F.2d 28.

The counterclaim alleges (C.R. 64 at page 21), and the verified answer thereto admits that a present and continuing actual controversy exists between the parties regarding the status of the six copyrights, and the rights, duties and obligations of each of the parties to the controversy. See Appendix C to this Petition and Statement of Facts at pages 14-16, supra. Plaintiffs themselves recognized at trial that the pleadings placed the copyright status of all six films, including the film "C.B. Mamas", in issue. See Plaintiffs' exhibit 6 (introduced at R.T. 646, being the "Registration of Claim to Copyright" issued to Mooks, Inc., published March 26, 1976).

See also Plaintiffs' cross-examination of defendant Clancy regarding: (1) defendants' exhibit H-6 (R.T. 597), a time and motion study of the film "C.B. Mamas"; (2) Defendants' exhibit G-6 (R.T. 595), a continuity of the film "C.B. Mamas"; and (3) Defendants' exhibit F (R.T. 633), a video copy of the film "C.B. Mamas", which copy was subsequently played for the jury.

(D) WHERE FACTS TEND TO INDICATE THAT GENUINE ISSUES OF MATERIAL FACT EXIST AND ESTABLISH A CASE OR CONTROVERSY BETWEEN THE PARTIES, UNDER RULE 56(c), F.R.C.P., THE COUNTERCLAIM CANNOT BE DISMISSED.

The Court, having received evidence on the counterclaim, converted its judgment of dismissal for failure to state a claim upon which relief can be granted to one for summary judgment under Rule 56, F.R.C.P. See Rule 12(c), F.R.C.P.; International Longshoremen's and Warehousemen's Union v. Kuntz, 9 Cir., 334 F.2d 165, 168; Smith v.

U.S., 9 Cir., 362 F.2d 366. Under Rule 56(c), a motion for summary judgment may not be granted if there is a genuine issue as to a material fact. On appeal, where facts tend to indicate that a case or controversy exists between the parties, the granting of summary judgment must be vacated. Smith v. U.S., supra.

(D)(1) THE RE-EXHIBITION OF CERTAIN SUBJECT FILMS ESTABLISHES A CASE OR CONTROVERSY.

Subsequent to the entry of the jury verdict and while the Counterclaim was under submission, the motion pictures "Resurrection of Eve" and "C.B. Mamas" were again exhibited, prompting counterclaimants to move for an order to reopen trial on the counterclaim for the taking of new evidence. See Statement of Facts at page 20 supra. The re-exhibition of "C.B. Mamas" establishes the existence of a continuing case and controversy as to such film.

(D)(2) THE FILING OF A FEDERAL CIVIL RIGHTS ACTION BY CERTAIN COUNTERDEFENDANTS AGAINST THE COUNTERCLAIMANTS AND OTHERS, INVOLVING IN PART THE SAME CLAIMS AND ARISING OUT OF THE SAME OCCURRENCES AS ARE PRESENTED IN THE COUNTERCLAIM, ESTABLISHES THE EXISTENCE OF A CASE OR CONTROVERSY.

This Court can take judicial notice of the fact that on March 12, 1980, Counter-defendant Cinema 7, Inc., filed Civil Rights Action No. 80-959-FW, in the U.S. District Court, Central District of California, naming the Counterclaimants herein as defendants, which lawsuit claims a constitutional tort and injury to property rights in the same obscene material as is involved herein. 28 U.S.C. Section 201.

(D)(3) A PRESENT AND CONTINUING ACTUAL CONTROVERSY EXISTS BETWEEN PETITIONER CLANCY AND THE RESPONDENTS AS TO THEIR RESPECTIVE RIGHTS, DUTIES AND OBLIGATIONS IN RELATION TO SUCH FILMS.

The testimony established that the controversy regarding the Mitchell Brothers'

Santa Ana Theater, which commenced in September of 1975 with the exhibition of the three films "Behind the Green Door", "Resurrection of Eve", and "Sodom and Gomorrah", was of a continuing nature. (R.T. 412-415; 710). Clancy stated that the photographic and sound surveillances of the Mitchell Brothers' Theater were continuing and were being undertaken at the time of the trial. (R.T. 346).

Clancy identified a time and motion study and continuity made under his direction by copying portions of the videotape "C.B. Mamas" which had recently been purchased in San Francisco. (R.T. 492). In response to questions from Counterdefendants' counsel, Joseph Rhine, Clancy stated his intention to continue such copying in the future under his continuing claim that the film was obscene per se and could not be copyrighted under federal law. (R.T. 595-596).

The evidence is clear that the controversy between the Counter defendants and Counterclaimant James J. Clancy is continuing and extends beyond the jurisdictional boundaries of Orange County to the 50 states. Clancy stated that he renders the same type of assistance to law enforcement throughout the United States and uses the same techniques in connection with the filing of similar public nuisance abatement actions in other jurisdiction. It was stipulated between the parties that the Counterdefendants are regularly engaged in the business of supplying the same six films elsewhere throughout the United States.

IV

A FEDERAL COURT HAS EQUITABLE JURISDICTION TO AUTHORIZE THE FORFEITURE OF OBSCENE MATERIALS WHICH PLAINTIFFS VOLUNTARILY PLACE UNDER THE COURT'S CONTROL INCIDENT TO COPYRIGHT INFRINGEMENT LITIGATION WHICH THOSE PLAINTIFFS HAVE INITIATED, OR INCIDENT TO THE GOVERNMENTAL AGENCY'S DECLARATORY JUDGMENT COUNTERCLAIM.

Exclusive jurisdiction to determine the validity of the alleged copyrights is conferred upon the U.S. District Court by two federal statutes: 28 U.S.C., Section 1338 and 28 U.S.C., Section 2201. If the Federal Court System determines the motion pictures are obscene under federal standards, then respondents will not be entitled to gain repossession of the 16mm copies which are presently in the custody of the U.S. District Court. Congress has declared obscene matter to be contraband and the subject of forfeiture. U.S. v. 37 Photographs, supra, at 376. The federal statutes must be read in pair materia. (See page 20 supra.)

An action for a declaratory judgment brings subject matter before the jurisdiction of this court for a determination as to its character. All of the persons having ownership, possession and control of the subject matter are before

this Court and subject to its equity powers. The fact that this action arose in connection with a declaratory judgment as to a copyright claim, as opposed to a claim of importation of obscene material, cannot "blindfold" the Court and prevent it from exercising its natural and inherent powers. The same consequences should result (i.e. forfeiture) 28 U.S.C., Section 2202.

Further, the power to determine that a copyright mark, placed on an obscene film, is invalid, necessitates a recognition of the power to order the negatives and all positive prints of such films to be deposited in Court for correction to prevent a fraudulent representation, 17 U.S.C., Section 506(c).

(A) THE U.S. DISTRICT COURT, HAVING JURISDICTION OVER THE "RES" AND ALL PERSONS IN CONTROL THEREOF, HAS THE RIGHT TO USE ITS EQUITABLE POWERS TO PREVENT THE IRREPARABLE HARM WHICH IS CERTAIN TO RESULT FROM TRAFFIC IN HARD-CORE PORNOGRAPHY.

Where a federal court finds itself in possession of material which it has determined is obscene in a civil action, equity mandates that the court declare the same to be forfeit. "Implicit in the very determination that the films in question were 'obscene as a matter of law' is the presence of 'irreparable harm'" State of Florida v. Samscot Enterprises Inc., 297 So.2d 69 at 71, 72 (June 24, 1977).

The "forfeiture" relief invoked in the counterclaim relates to the illegal character of the property itself (i.e., whether or not its is capable of ownership). It is not the same type of "forfeiture" penalty which arises in connection with the use of automobiles in narcotic or money in gambling cases, wherein the court litigates the illegality of the activity involved. There the Court declares a cessation of property rights which did at one time exist in said material. This stands in sharp

contrast to the remedy of equitable forfeiture where obscene material is the subject of the action. A judicial declaration of forfeiture affirms the fact that no property rights ever existed in such material, at any time.

This type of forfeiture is utilized in the federal importation statute, 19 U.S.C., Section 1305(a), which mandates the forfeiture of obscene material, not as a remedy for illegal conduct, but incident to a determination of status., i.e., that no property rights ever existed in said property. See U.S. v. 37 Photographs, supra, referred to at page 20 herein. See, also, Warshaw v. Eastman Kodak Co., 252 S.E.2d 182 (January 11, 1979).

Rule 65 of the Federal Rules of Civil Procedure controls the granting of ancillary relief in the nature of injunctions. Petitioners know of no case authority which would prevent a federal court from granting

ancillary relief which is necessary to the main action. The permanent injunction which was requested and denied as to "C.B. Mamas" was within the scope of the relief requested in the prayer for relief. See 28 U.S.C.sect. 2202.

(B) EVEN WERE THE COPYRIGHT LAWS FOUND TO BE INADEQUATE TO AUTHORIZE THE FULL RELIEF HEREIN REQUESTED, THE FEDERAL DISTRICT COURT IS AUTHORIZED TO GRANT SUCH RELIEF IN THE DECLARATORY JUDGMENT COUNTERCLAIM UNDER GENERAL PRINCIPLES GOVERNING FEDERAL PUBLIC NUISANCE LAW.

In the state public nuisance action below, the City of Santa Ana is simply exercising its historical powers to abate a moral public nuisance through legal action. The exhibition of obscene pictures was an indictable offense at common law, being in the nature of a moral public nuisance. See H.G. Wood, The Law of Nuisances, section 57 at page 77 and section 65 at page 85; Commonwealth v. Holmes, 17 Mass. 336;

Commonwealth v. Sharpless, 2 S and R (Penn.) 91; 7 Am.Dec. 632. A "moral" nuisance is a "per se" public nuisance and the municipal power to abate the same is inherent in government, which is under an obligation to remove the "moral" nuisance. See H.G. Wood, "The Law of Nuisances", sections 23 and 24 at pp. 45-46 and section 743 at page 972; Joyce, Law of Nuisances, section 345 at page 498. In James Phalen v. Commonwealth of Virginia, 12 L.Ed. 1030, 1033 (1850) the U.S. Supreme Court has pointed out:

> "The suppression of nuisances injurious to public health or morality is among the most important duties of government. It is a principle of the common law, that the king cannot sanction a nuisance."

See also Mugler v. Kansas, 123 U.S. 205 (Dec. 5, 1887) where this Court specifically held that Equity Courts do have the power to enter summary interlocutory "abatement" orders in proper cases.

The gross nature of the subject films, See Appendix D-1 through D-185, and their mode of distribution, which the proof shows is both national and international, presents the Court with jurisdiction over a federal public nuisance which requires abatement. Illinois v. City of Milwaukee, 406 U.S. 91.

Because the counter-defendants voluntarily initiated litigation regarding their claims to federal copyrights, the federal Court has acquired jurisdiction over a moral federal public nuisance which requires the exercise of the Court's equitable injunctive powers and abatement. Under Illinois v. City of Milwaukee, supra, the trial court, by virtue of its personal jurisdiction over the counter-defendants who were in control of all right, title and interest in the six moral public nuisances which were before the court in "in rem" proceedings, has jurisdiction to enjoin and

prevent the distribution of such films to other states in the union.

There is no logical reason for limiting the concept of the federal nuisance law to physical pollutants. See James Phalen v. Commonwealth of Virginia, supra, and People ex rel. Busch et al. v. Projection Room Theater, 17 Cal.3d 42, (June 1, 1976). Indeed, the original rationale for fashioning the rule embraces "moral" nuisances as easily as "physical" nuisances. Charger v. Tennessee Copper Co., 206 U.S. 230, (1907) was an action brought under the Supreme Court's original jurisdiction to enjoin the discharge of poisonous gases across the state's border. In that case, the court declared that although the States, by their union, made forcible abatement of nuisances from outside their border impossible, they did not thereby agree to submit to whatever might be done to them, nor did they renounce the possibility of

making reasonable demands on the grounds of their remaining "quasi-sovereign" interests. Thus, under the federal system, interstate transmission of both noxious gases and noxious motion pictures becomes a matter of federal concern.

A comparison between obscenity and the community's physical environment was drawn by Chief Justice Burger writing for the majority in Paris Adult Theater I v. Slaton: 413 U.S. 49 at page 460. Although the Chief Justice was speaking in general terms regarding the control of obscenity, the relationship between obscenity and physical pollution is apparent in the federal context. The federal common law of nuisance is designed to protect each of the "quasi-sovereign" states from pollutants eminating from their 49 sister states. A single polluting smoke stack, or source of sewage dumped into a river, will affect one, two, or, at the most, several states. On

the other hand, a manufacturer of obscene materials can easily, as this case demonstrates, send out its pollution into each of the 50 states and to other nations in violation of a specific federal treaty.

A second rationale for applying federal common law in this instance arises out of the need of federal courts to be able to fashion law to fill the gaps which exist in statutory schemes. As conceived by Congress, the copyright law is a conceptually simple scheme to insure that authors, artists, and other creative individuals should receive the economic benefits of their creativity, so that the Progress of Science and useful arts might be provided. This insurance is provided by means of the civil and criminal penalties built into the remedial portions of the statutes. It was never contemplated by Congress that it might be used as a sword to carry out unlawful purposes; yet, this is

exactly the use to which the copyright law has been put in the case at bar. Here, the manufacturers seek to use the copyright statutes to protect unlawful materials, and intimidate law enforcement officials and duly constituted governmental entities in their efforts to suppress what Roth v. U.S., 354 U.S. 476, holds is "utterly without redeeming social importance" and contraband.

CONCLUSION

The judgment of the trial court below should be reversed and the case remand to the District Court with directions to grant relief in accordance with the following principles of law:

(1) A copyright may not be granted to material which is obscene under federal standards.
(2) The six motion pictures hereinabove named are obscene under federal standards.
(3) The six motion pictures are contraband under federal standards, and copies in the plaintiffs' possession or control

are to be deposited in court for destruction.

(4) The Certificates of Registration of a Claim To Copyright issued to such motion pictures are invalid.

(5) There is no copyright property in such films.

(6) The District Court is empowered to enjoin the Plaintiffs and their agents from sending or receiving any of such motion pictures in interstate or foreign commerce.

Dated: May 10, 1981

Respectfully submitted,

James J. Clancy

Attorney for Petitioners

CERTIFICATE OF SERVICE

I, hereby certify that on this ____ day of May, 1982, the original and 40 copies of the within Petition for Writ of Certiorari were deposited in the United States Post Office in Phoenix, Arizona, with first-class postage prepaid, and properly addressed to the Clerk of the United States Supreme Court.

I further certify that three (3) copies were also mailed, postage prepaid, to the below listed parties to the proceedings and that all parties required to be served have been served.

LAW OFFICE OF ROBERT L. THORP
1524 California Street
San Francisco, California 94109

James J. Clancy
9055 La Tuna Cyn. Rd.
Sun Valley, CA 91352

Attorney for Petitioner.

APPENDIX A

Opinion of the United States Court of Appeals, Ninth Circuit, in Jartech, Inc., et al. v. Clancy, et al., 666 F.2d 403 (Jan. 25, 1982)

. . . A-1 thru A-22

JARTECH, INC., Anatuna, Inc., Cinema 7, Inc., and Mooks, Inc., all California Corporations, Plaintiffs-Appellants,

v.

James J. CLANCY, Gordon Bricken, James E. Ward, David L. Brandt, David F. Ortiz, Defendants-Appellees.

JARTECH, INC.; Anatuna, Inc.; Cinema Seven, Inc.; and Mooks, Inc., all California Corporations, Plaintiffs-Appellants,

v.

James J. CLANCY; Gordon Bricken; James E. Ward; David L. Brandt; David F. Ortiz, Defendants-Appellees.

James J. CLANCY, Gordon Bricken, James E. Ward, David L. Brandt, David F. Ortiz, Counter-Claimants/Appellants,

v.

JARTECH, INC., Anatuna, Inc., Cinema 7, Inc., and Mooks, Inc., all California

Corporations, James Mitchell, Artie Mitchell, Mitchell Brothers Film Group, a general partnership, Counter-Defendants/Appellees. Nos. 79-3087, 80-5010 and 80-5016.

United States Court of Appeals, Ninth Circuit.

Jan. 25, 1982.

Appeal from the United States District Court for the Central District of California.

Before HUG and SKOPIL, Circuit Judges, and MUECKE, District Judge.

MUECKE, District Judge:

This series of appeals raises for the first time in this circuit the issue of whether obscenity is a defense to a copyright infringement claim. This court has also been asked to determine whether use of copies of a copyrighted work by a local government in a nuisance abatement action is within the fair use

exception to the copyright laws. Review is also sought of the trial court's award of attorney's fees upon the finding that the initiation of the suit was vexatious, and its dismissal of a counterclaim which sought a declaration that the copyrighted movies involved herein were obscene as a matter of law.

BACKGROUND

James and Artie Mitchell are the producers, distributors and displayers of adult movies. The plaintiffs below (hereinafter, "Mitchells"), are entities, controlled by the Mitchells, which perform these various functions. The defendants in the trial court were attorney James Clancy, and four individual members of the Santa Ana City Council (hereinafter collectively referred to as "the Council").

On January 19, 1976, Clancy entered into a contract with the City of Santa Ana to act as special counsel to the city for the drafting, adoption and implementation of a public nuisance abatement ordinance aimed at ridding the city of its adult movie theaters. Subsequently, the Council adopted a city ordinance which declared that certain cinematic depictions of sexual activities constituted a nuisance. Later, an amendment to the ordinance provided a procedure for the abatement of such nuisances. On October 26, 1976, the Council adopted a resolution declaring a Mitchell Brothers' theatre to be a nuisance for exhibiting such films. The City Attorney was ordered to abate the nuisance and all of the Mitchells' licenses and permits were revoked.

On October 12, 1976, the Mitchells

filed a suit against the Council for copyright infringement of five properly copyrighted motion pictures. The complaint alleged that an agent of the Council surreptitiously entered their theatre in Santa Ana and employed a process perfected by Clancy, whereby photographs were taken every few seconds of the visual screen images while a tape recorder recorded the entire soundtrack of the films. The photographs were subsequently reproduced in small prints of fifty per page, with the dialogue from the tape recordings printed underneath. These materials were used by the Council in determining that the theatre was a nuisance and in the subsequent abatement proceedings against the Mitchell theatre.

The Mitchells' copyright infringement suit proceeded to trial and on December 14, 1978, the jury returned special

verdicts which found that: "(1) each defendant was responsible for the copying of five movies to which the plaintiffs held a copyright; (2) the use made by the defendants of the copy of the films was a fair use; (3) each film was obscene; and, (4) The profits realized by the defendants as a result of the infringement of the copyright for each film was 'none.'"

On June 29, 1979, the trial court considered a counterclaim filed by the Council, which sought a declaratory judgment that the five pictures were obscene as a matter of law and should be seized as contraband. The court found that the action had been rendered moot by the determination made in the case-in-chief and that there no longer existed a case or controversy between the parties. Upon these findings, the

court concluded that it lacked jurisdiction to render a declaratory judgment on the issue of the obscenity vel non of the films, that it lacked the jurisdiction to authorize the forfeiture of materials found to be outside the copyright laws, and that federal copyright law made no specific provision for the exclusion of "immoral articles" or "obscene matter" from its protection.

On October 31, 1979, the trial court entered judgment for the Council and against the Mitchells for $23,157.11 in attorney's fees. This judgment was based upon the conclusion that the copyright infringement suit brought by the Mitchells was vexatious and brought to harass the defendants. The court noted that essentially the same plaintiffs had unsuccessfully tried the issue in the United States District Court in Texas.

The court felt that the timing of the suit suggested that it may have been instituted to intimidate the Council members in their consideration of the nuisance action pending against the plaintiffs. The court also questioned the plaintiffs' intent in bringing the suit against some, but not all, of the Council members in their individual capacities and in naming special counsel Clancy as a defendant, but not including the actual agent who made the film and sound reproductions.

From these actions, the Mitchells have appealed the special verdicts returned by the jury, finding that obscenity is a defense to a copyright infringement action and that the Council's use was a fair use. They have also appealed the award of attorney's fees. The Council has appealed the court's dismissal of its counterclaim.

THE COPYRIGHTABILITY OF OBSCENITY

Throughout pretrial proceedings and at trial, the Mitchells unsuccessfully asserted that obscenity was not a valid defense to a claim of infringement.

The Constitution authorizes the granting of copyrights "(t)o promote the Progress of Science and useful Arts," U.S. Const. art. 1, § 8, cl. 8. In response, Congress has authorized the copyrighting of "original works of authorship." 17 U.S.C. § 102 (1976). The Council argues that Congress may not grant copyright protection to obscenity as that would defy the constitutional mandate of promoting the progress of science and useful arts. The Mitchells assert that Congress has reasonably sought to effectuate the constitutional directive by enacting a content-free statute.

This Court, in considering the copyrightability of fraudulent materials in Belcher v. Tarbox, 486 F.2d 1087 (9th Cir. 1973), stated:

> "There is nothing in the Copyright Act to suggest that the courts are to pass upon the truth or falsity, the soundness or unsoundness, of the views embodied in a copyrighted work. The gravity and immensity of the problems, theological, philosophical, economic, scientific that would confront a court if this view were adopted are staggering to contemplate. It is surely not a task lightly to be assumed, and we decline the invitation to assume it. 486 F.2d at 1088."

The Belcher decision was relied upon by the Fifth Circuit in rejecting obscenity as a defense to copyright

infringement in a case which also involved the Mitchells. Mitchell Brothers Film Group v. Cinema Adult Theatre, 604 F.2d 852 (5th Cir. 1979), cert. denied, 445 U.S. 917, 100 S.Ct. 1277, 63 L.Ed.2d 601 (1980). That opinion traced the history of copyright laws, and in it the Fifth Circuit observed that any time a content-based statute had been passed by Congress, it has shortly thereafter been replaced with a content-free law.

The leading treatise on copyright has called the Fifth Circuit's Mitchell Brothers case "the most thoughtful and comprehensive analysis of the issue." Nimmer on Copyright, § 2.17, p. 2-194.2 (1980). Nimmer also considers Mitchell Brothers to represent the prevailing view on this issue. Id. While the case dealt with the now repealed Copyright Act of 1909, specifically 17 U.S.C.

§ 4, the language of the present statute requires the same interpretation. Prior law referred to "all writings of an author," while the current statute employs the similar phrase "original works of authorship." 17 U.S.C. § 102 (1976).

Pragmation further compels a rejection of an obscenity defense. Under the dictates of Miller v. California, 413 U.S. 15, 93 S.Ct. 2607, 37 L.Ed.2d 419 (1973), obscenity is a community standard which may vary to the extent that controls thereof may be dropped by a state altogether. Paris Adult Theatres I v. Slaton, 413 U.S. 49, 93 S.Ct. 2628 37 L.Ed.2d 446 (1973); United States v. 2,200 Paper Back Books, 565 F.2d 566, 569-70 (9th Cir. 1977). Acceptance of an obscenity defense would fragment copyright enforcement, protecting registered materials in a certain community, while, in effect, authorizing pirating in

another locale.

FAIR USE

In returning one of its special verdicts, the jury found that the use made by the Council of the copies of the films was a "fair use." Fair use is a statutory defense to copyright liability. 17 U.S.C. § 107.

In its presentation to the jury, the Council had argued that because it had not commercially exploited the Mitchells' copyright, but had used it in a nuisance abatement proceeding, its use was within the safe harbor of fair use. The Mitchells have challenged the jury's determination of fair use and the trial court's instruction on the defense.

Recently, this Court closely scrutinized the fair use doctrine. Universal City Studios, Inc. v. Sony Corp.

of America, 659 F.2d 963, at 972-974 (9th Cir. 1981). Therein, it was determined, inter alia, that the copying of telecasts of copyrighted audiovisual materials by owners of video recorders in their homes for their own private noncommercial use was an infringement of the copyright laws. Specifically, the Sony Court found that such copying was not a fair use.

In coming to this conclusion, the Court first examined whether the alleged infringers reproduced the work for its intrinsic purpose. In other words, did the alleged infringers copy the material to use it for the same purpose that the copyright holder intended his audience to use or enjoy the work.

The Sony opinion then examined 17 U.S.C. § 107, which illustratively sets forth the parameters of fair use. Section 107 directs the consideration of: (1)

the purpose and character of the use, including whether such use is commercial or nonprofit; (2) the nature of the copyrighted work; (3) the amount of copying involved; and, (4) the effect of the copying on the market of the copyrighted work. Id.

In Sony, this Court found that the use made by the alleged infringers was the same intrinsic use to which the copyright holders expected protection from unauthorized use. Such a finding is strong indicia of finding no fair use. As this conclusion was not contradicted by the statutory analysis, the Court found no fair use and an infringement of the law.

In this case, the use to which the alleged infringers put the copy is not an intrinsic use. The alleged infringers made abbreviated copies of the films,

not for subsequent use and enjoyment, but for evidence to be used in the nuisance abatement proceedings. The suggestion of fair use made by the finding that the copies were not made for intrinsic use is not contradicted by application of Section 107's criteria. While the statutory standards are not precisely applicable to the facts at bar, because there was evidence that the Council's use was neither commercially exploitive of the copyright, nor commercially exploitive of the copyright holder's market, the jury's verdict is certainly supported by substantial evidence.

The district court instructed the jury on fair use, essentially in terms of the Section 107 criteria. The propriety of giving the fair use instruction may have been a closer question were it not for the fact that the record

reveals that the Mitchells proferred or at least acquiesced in the giving of the fair use instruction. Having failed to object to the giving of the instruction, the Mitchells may not now challenge the instruction as erroneous. Rule 51, F.R. Civ. P.

ATTORNEY'S FEES

Section 505 of the Copyright Act and its predécessor which was in effect at the time of this suit, Section 116, authorize the award of attorney's fees to the prevailing party in a lawsuit. 17 U.S.C. § 505 (1976); 17 U.S.C. § 116 (repealed). When attorney's fees are awarded to a prevailing defendant, the award represents a penalty for the institution of a frivolous or bad faith suit. Edward B. Marks Music Corp. v. Continental Record Co., 222 F.2d 488, 493 (2d Cir. 1955) cert. denied, 350 U.S.

861, 76 S.Ct. 101, 100 L.Ed. 764 (1955); Overman v. Loesser, 205 F.2d 521, 524 and n. 9 (9th Cir. 1953).

The court based its award of fees to the defendants on the grounds that the same issue had been decided against the plaintiffs in a recent district court case in Texas, and that the chronology of events led the court to believe that the suit was instituted for purposes of intimidation.

The Texas district court decision has since been reversed by the Fifth Circuit. Mitchell Brothers Film Group v. Cinema Adult Theatre, 604 F.2d 852 (5th Cir. 1979), cert. denied, 445 U.S. 917, 100 S.Ct. 1277, 63 L.Ed.2d 601 (1980). While the district court decision will not be reversed in this case, the Mitchells' prosecution of obscenity as a defense was not only not frivolous, but their position has ultimately been

accepted. Furthermore, the Mitchells have offered explanations for their prosecution of this suit, which, in the opinion of this court, reflect a sincere interest in the settlement of close legal questions. The plaintiffs initiated this suit only after defendants had reproduced and used their registered properties in a manner which was arguably illegal.

In light of the foregoing, the trial court's award of attorney's fees is reversed.

PER SE OBSCENITY

The Council has appealed the dismissal of their counterclaim. The counterclaim sought a determination that the movies in question were "obscene per se" and urged the court to order the seizure and destruction of all prints of the films.

The court, with a verdict that obscenity constituted a defense to copyright infringement, determined that there was no longer a controversy between the parties and dismissed the counterclaim as being moot. The court made the alternate conclusions that the complaint failed to state a claim upon which relief could be granted and that the court was without the jurisdiction to order seizure and destruction of such materials.

While the decision below, that obscenity is a valid defense is incorrect, the Council's activities have been immunized by the jury's finding that their's was a fair use. As a consequence, the obscenity per se issue is still moot.

Additionally, the trial court's handling of the merits was entirely correct. There is nothing in the Copyright

Act to suggest that the Court has the authority to order forfeiture and destruction of obscene materials. See 17 U.S.C. §§ 501-10, Copyright Infringement and Remedies. Furthermore, the Council's request that the movies be found obscene as a matter of law flies in the face of settled Supreme Court case law which unquestionably establishes this as a factual determination. Miller v. California, 413 U.S. 15, 93 S.Ct. 2607, 37 L. Ed.2d 419 (1973); Paris Adult Theatre I v. Slaton, 413 U.S. 49, 93 S.Ct. 2628, 37 L.Ed.2d 446 (1973).

CONCLUSION

The decision of the trial court, finding the Council not liable for a copyright infringement, is affirmed. While this court does not agree that obscenity constitutes a defense to a copyright claim, the jury's verdict that

the use of the copyrighted materials was a fair use was not clearly erroneous.

The dismissal of the Council's counterclaim was also appropriate and is affirmed. The award of attorney's fees to the Council is reversed.

AFFIRMED in part; REVERSED in part.

APPENDIX B

Judgment Re: Counterclaim . . . B-1

Findings of Fact and Conclusions of Law Re: Counterclaim B-3

UNITED STATES DISTRICT COURT

CENTERAL DISTRICT OF CALIFORNIA

JARTECH, INC., ANATUNA, INC., CINEMA 7, INC., and MOOKS, INC., all California corporations, Plaintiffs, v. JAMES J. CLANCY, GORDON BRICKEN, JAMES E. WARD, DAVID L. BRANDT, DAVID F. ORTIZ, Defendants.	CV 76-3191-LEW JUDGMENT RE COUNTERCLAIM FILED NOV 19 1979 CLERK, U.S. DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA BY DEPUTY
JAMES J. CLANCY, et al., Counter-claimants, v. JARTECH, INC., et al., Counter-defendants.	ENTERED NOV 23 1979 CLERK, U.S. DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA BY DEPUTY

This matter came on regularly for hearing on the counter-claim on June 29, 1979, before the Honorable Laughlin E. Waters. The Court having requested,

received, read and considered written arguments, and points and authorities.

IT IS HEREBY ORDERED AND ADJUDGED that the controversy involved in defendants' counterclaim was rendered moot by the verdict of the jury, and that in any event the counterclaim fails to state a claimupon which relief can be granted. IT IS ORDERED that judgment be granted in favor of the counter-defendants.

DATED: October 6, 1979

/s/ LAUGHLIN E. WATERS

Laughlin E. Waters

United States District Judge

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JARTECH, INC., ANATUNA, INC., CINEMA 7, INC., and MOOKS, INC., all California corporations,	
Plaintiffs,	CV 76-3191-LEW
v.	FINDINGS OF FACT AND CONCLUSIONS OF LAW RE COUNTERCLAIM
JAMES J. CLANCY, GORDON BRICKEN, JAMES E. WARD, DAVID L. BRANDT, DAVID F. ORTIZ,	
Defendants.	FILED NOV 19 1979 CLERK, U.S. DISTRICT COURT CENTRAL DISTRICT OF CLAIFORNIA BY _____ DEPUTY
JAMES J. CLANCY, et al.,	
Counter-claimants,	
v.	
JARTECH, INC., et al.,	
Counter-defendants.	

The matter of the counterclaim in this action was taken under submission at the close of trial in the main action. The Court having requested, received,

read and considered written arguments, and points and authorities, the Court makes its findings as follows:

FINDINGS OF FACT

1. The issue which counterclaimant seeks to resolve, the obscenity vel non of the films named hereinafter, has been rendered moot by the determinations made in the case in chief in this actions.

2. There does not exist any case or controversy between the parties regarding the following films: "Behind the Green Door," "Resurrection of Eve," "Sodom and Gomorrah," "Inside Marilyn Chambers," "Autobiography of a Flea," and "C.B. Mamas."

CONCLUSIONS OF LAW

The following Conclusions of Law, and insofar as they may be considered to be findings of fact, are so found by this Court to be true in all respects:

1. The Court does not have the jurisdiction to make a declaratory judgment on the issues of the obscenity vel non of the films named hereinabove.

2. The Court does not have the jurisdiction to authorize forfeiture of matter found to be outside the protection of the copyright laws.

3. The federal copyright law (17 U.S.C.) makes no specific provision for the exclusion of "immoral articles" or "obscene matter" from its protection.

DATED: November 19, 1979

/s/ LAUGHLIN E. WATERS

Laughlin E. Waters

United States District Judge

APPENDIX C

(Reference: Petition at pages 14 & 16)

Defendants' Amended Counterclaim
filed June 5, 1978 . . . . . C-1

Plaintiffs' and Counter-Defendants'
Answer to Amended Counterclaim
filed July 7, 1978 . . . . . C-49

JAMES J. CLANCY
Attorney at Law
9055 La Tuna Canyon Road
Sun Valley, CA 91352

(213) 352-2069

Attorney for Defendants

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JARTECH, INC., ANATUNA, INC., CINEMA 7, INC., AND MOOKS, INC., all California corporations, Plaintiffs, v. JAMES J. CLANCY, GORDON BRICKEN, JAMES E. WARD, DAVID L. BRANDT, DAVID F. ORTIZ, Defendants.	Civil Action No. 76-3191-LEW DEFENDANTS' AMENDED COUNTERCLAIM.
JAMES J. CLANCY, GORDON BRICKEN, JAMES E. WARD, DAVID L. BRANDT, DAVID F. ORTIZ, Counter-Claimants, v.	FILED JUN 5, 1978 CLERK, U.S. DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA BY _____ DEPUTY

JARTECH, INC., ANATUNA, INC., CINEMA 7, INC., AND MOOKS, INC., all California Corporations, JAMES MITCHELL, ARTIE MITCHELL, MITCHELL BROTHERS' FILM GROUP, a general partnership,

Counter-Defendants.

TO THE HONORABLE JUDGE OF SAID COURT:

COUNTERCLAIM

COME NOW the defendants and counterclaimants, and allege:

1. JARTECH, INC. (hereinafter called "JARTECH") was incorporated on April 23, 1970 as a Calfiornia Corporation with its principal place of business in San Francisco, California and with the authority to issue 10,000 shares of stock. JARTECH is controlled by James Mitchell, age 33, and his brother Artie Mitchell, age 31, hereinafter referred to collectively as the "Mitchell Brothers", through

their ownership of 69% of the entire stock. James Mitchell is the president and Artie Mitchell is the vice-president of JARTECH. JARTECH stock is owned as follows: James Mitchell 1100 shares, Artie Mitchell 1100 shares; Cinema 7, Inc. 4700 shares; Gerald J. Ward 1800 shares; Jon Fontana 1300 shares.

2. ANATUNA INC. (hereinafter called "ANATUNA") was incorporated on April 23, 1970 as a California Corporation with its principal place of business in San Francisco and with authority to issue 10,000 shares of stock. ANATUNA is controlled by the Mitchell Brothers through their ownership of 67% of the entire stock. James Mitchell is the president and Artie Mitchell is the secretary-treasurer of ANATUNA. ANATUNA stock is owned as follows: James Mitchell 1600 shares; Artie Mitchell 1600 shares; Cinema 7,

Inc. 3500 shares; Gerald J. Ward 1900 shares; Alex Benton 1400 shares.

3. CINEMA 7, INC. (hereinafter called "Cinema 7") was incorporated on February 6, 1969, as a California Corporation with its principal place of business in San Francisco, California, and with authority to issue 10,000 shares of stock. CINEMA 7, is controlled by the Mitchell Brothers through their ownership of 100% of the entire stock. James Mitchell is the president and Artie Mitchell is secretary-treasurer of CINEMA 7. CINEMA 7 stock is owned as follows: James Mitchell 5000 shares; Artie Mitchell 5000 shares.

4. MOOKS, INC. (hereinafter called "MOOKS") was incorporated on December 26, 1973 as a California Corporation with its principal place of business in San Francisco, California and with the

authority to issue 2,500 shares of stock. MOOKS is controlled by the Mitchell Brothers through their ownership of 100% of the entire stock. James Mitchell is the president and Artie Mitchell is the vice-president of MOOKS. MOOKS stock is owned as follows: James Mitchell 1,250 shares; Artie Mitchell 1,250 shares.

5. "Mitchell Brothers Film Group" is a general partnership which was formed by the Mitchell Brothers prior to Feb. 1, 1973. At the time of its formation and continuously up to the present date, James and Artie Mitchell have each owned 50% of the partnership interest, and have jointly controlled the partnership business.

6. Counter-claimants are informed and believe and, based upon such information and belief, allege as a fact that the Mitchell Brothers, James Mitchell

and Artie Mitchell, were and are now, principals and the alter ego of the counter-defendant corporations JARTECH INC., ANATUNA INC., CINEMA 7, INC. and MOOKS, INC., and the general partnership "Mitchell Brothers Film Group" in which said persons are co-partners, and are beneficially interested in the income, profits and financial successes of the corporate counter-defendants herein and said general partnership, and have dominated, influenced and controlled the business and affairs of the corporate counter-defendants and said general partnership; that there is such a unity of interest and ownership between said persons and the counter-defendants and said general partnership that the individuality and separateness of said persons and the coporate counter-defendants and said general partnership has ceased; that

adherence to the fiction of the separate existence of said persons and of the counter-defendant corporations and partnership herein would under the circumstances, tolerate a fraud and promote an injustice.

7. Prior to April 18, 1973, counter-defendant JARTECH produced the motion picture "Behind the Green Door". JARTECH has complied in all respects with the procedural laws of the U.S. governing copyrights and has received from the Register of Copyrights a Certificate of Registration identified as "Registration No. M.P.24594, Class M". At all times herein mentioned, JARTECH claims to have been the owner of the exclusive rights and privilege in and to the copyright of said motion picture under such certificate of registration and to be the sole owner of all rights, title and interest

in and to the copyright in said motion picture film from and since its issuance. JARTECH also claims that all of the copies of such motion picture which were made and exhibited under its authority or license have been printed and produced in strict conformity with the provisions of the copyright laws of the United States.

8. Prior to April 10, 1973, counter-defendant ANATUNA produced the motion picture entitled "Resurrection of Eve". ANATUNA has complied in all respects with the procedural laws of the U.S. governing copyrights and has received from the Register of Copyrights a Certificate of Registration identified as "Registration No. M.P.24595, Class M". At all times herein mentioned, ANATUNA claims to have been the owner of the exclusive rights and privileges in and to the copyright of said motion picture under such certificate of Registration and to be the sole

owner of all rights, title and interest in and to the copyright in said motion picture film from and since its issuance. ANATUNA also claims that all of the copies of such motion picture which were made and exhibited under its authority or license have been printed and produced in strict conformity with the provisions of the copyright laws of the United States.

9. Prior to September 3, 1975, counter-defendant CINEMA 7 produced the motion picture entitled "Sodom and Gomorrah". CINEMA 7 has complied in all respects with the procedural laws of the U.S. governing copyrights and has received from the Register of Copyrights a Certificate of Registration identified as "Registration No. L.P.45011, Class L". At all times herein mentioned, CINEMA 7 claims to have been the owner of the exclusive rights and privileges in and

to the copyright of said motion picture under such Certificate of Registration and to be the sole owner of all rights, title and interest in and to the copyright in said motion picture film from and since its issuance. CINEMA 7 also claims that all of the copies of such motion picture which were made and exhibited under its authority or license have been printed and produced in strict conformity with the provisions of the copyright laws of the United States.

10. Prior to January 1, 1976, counter-defendant CINEMA 7, Inc. produced the motion picture "Inside Marilyn Chambers". CINEMA 7, has complied in all respects with the procedural laws of the U.S. governing copyrights and has received from the Register of Copyrights a Certificate of Registration idnetified as "Registration No. M.P. 30483, Class M".

At all times herein mentioned, CINEMA 7 claims to have been the owner of the exclusive rights and privileges in and to the copyright of said motion picture under such Certificate of Registration and to be the sole owner of all rights, title and interest in and to the copyright in said motion picture film from and since its issuance. CINEMA 7 also claims that all of the copies of such motion picture which were made and exhibited under its authority or license have been printed and produced in strict conformity with the provisions of the copyright laws of the United States.

11. Prior to August 20, 1976, counter-defendant MOOKS produced the motion picture entitled, "Autobiography of a Flea". MOOKS has complied in all respects with the procedural laws of the United States governing copyrights and

has received from the Register of Copyrights a Certificate of Registration identified as "Registration No. L.P.46834, Class L." At all times herein mentioned, MOOKS claims to have been the owner of the exclusive rights and privileges in and to the copyright of said motion picture film from and since its issuance. MOOKS also claims that all of the copies of such motion picture which were made and exhibited under its authority or license have been printed and produced in strict conformity with the provisions of the copyright laws of the United States.

12. Prior to December, 1976, counter-defendant MOOKS produced the motion picture entitled, "C.B. Mamas". MOOKS has complied in all respects with the procedural laws of the United States governing copyrights and has received from the Register of Copyrights a Certificate of Registration, idenitified as,

"Registration No. L.P. 46891, Class L." At all times mentioned herein, MOOKS claims to have been the owner of the exclusive rights and privileges in and to the copyright of said motion picture under such Certificate of Registration and to be the sole owner of all rights, title, and interest in and to the copyright in said motion picture film from and since its issuance. MOOKS also claims that all of the copies of such motion picture which were made and exhibited under its authority or license have been printed and produced in strict conformity with the provisions of the copyright laws of the United States.

13. On February 1, 1973, counter-defendant JARTECH, as the producer of "Behind the Green Door", and the above described co-partnership, "Mitchell Brothers Film Group", as the "Distributor,"

entered into a written distribution agreement whereby JARTECH granted to Mitchell Brothers Film Group "the sole and exclusive right, license and privilege to distribute, exhibit, exploit and protect said production number ("Behind the Green Door") and to cause it to be distributed, exhibited, exploited, and protected throughout the world" for a period of six years. Under said contract JARTECH "shall own the negative, positive prints and still negatives of said production number; and the Distributor (Mitchell Brothers Film Group) shall have only such rights, licenses and privileges therein as are specifically granted herein".

14. On September 1, 1973, counter-defendant ANATUNA, as the producer of "Resurrection of Eve", and the above-described co-partnership "Mitchell Brothers Film Group", as the "Distributor", entered

into a written distribution agreement whereby ANATUNA granted to "Mitchell Brothers Film Group" the "sole and exclusive right, license and privilege to distribute exhibit, exploit and protect said production number ("Resurrection of Eve") and to cause it to be distributed, exhibited, exploited and protected throughout the world" for a period of six years. Under said contract, ANATUNA "shall own the negative, positive prints, and still negatives of said production number; and the Distributor ("Mitchell Brothers Film Group") shall have only such rights, licneses and privileges therein as are specifically granted herein".

15. On August 2, 1975, counter-defendant CINEMA 7, as the producer of "Sodom and Gomorrah", and the above-described co-partnership "Mitchell Brothers Film Group", as the "Distributor", entered

into a written distribution agreement whereby CINEMA 7 granted to "Mitchell Brothers Film Group" the "sole and exclusive right, license and privilege to distribute, exhibit, exploit and protect said production number ("Sodom and Gomorrah") and to cause it to be distributed, exhibited, exploited, and protected throughout the world" for a period of six years. Under said contract, CINEMA 7 "shall own the negative, positive prints, and still negatives of said production number; and the Distributor ("Mitchell Brothers Film Group") shall have only such rights, licnese and privileges therein as are specifically granted herein".

16. On November 14, 1975, counter-defendant CINEMA 7, as the producer of "Inside Marilyn Chambers", and the above-described co-partnership, "Mitchell Brothers Film Group", as the "Distributor", entered into a written distribution

agreement whereby CINEMA 7 granted to Mitchell Brothers Film Group "the sole and exclusive right, license and privilege to distribute, exhibit, exploit and protect said production number ("Inside Marilyn Chambers") and to cause it to be distributed throughout the world" for a period of six years. Under said contract CINEMA 7 "shall own the negative, positive prints and still negatives of said production number; and the Distributor (Mitchell Brothers Film Group) shall have only such rights, licneses and privileges therein as are specifically granted herein".

17. On June 1, 1976, counter-defendant MOOKS, as the producer of "The Autobiography of a Flea", and the above-described co-partnership "Mitchell Brothers Film Group", as the "Distributor", entered into a written distribution agreement

whereby MOOKS granted to "Mitchell Brothers Film Group" the "sole and exclusive right, license and privilege to distribute, exhibit, exploit, and protect said production number ("The Autobiography of a Flea") and to cause it to be distributed, exhibited, exploited and protected throughout the world" for a period of six years. Under said control, MOOKS "shall own the negative, positive prints, and still negatives of said production number; and the Distributor ("Mitchell Brothers Film Group") shall have only such rights, licenses and privileges therein as are specifically granted herein".

18. On January 1, 1976, counter-defendant MOOKS, as the producer of "C.B. Mamas," and the above described co-partnership, "Mitchell Brothers Film Group," as the "Distributor," entered into a

written distribution agreement whereby MOOKS granted to "Mitchell Brothers Film Group" the "sole and exclusive right, license, and privilege to distribute, exhibit, exploit and protect said production number ("C.B. Mamas") and to cause it to be distributed throughout the world" for a period of six years. Under said control, MOOKS shall own the negative, positive prints, and still negatives of said production number; and the Distributor ("Mitchell Brothers Film Group") shall have only such rights, licenses and privileges therein as are specifically granted herein."

19. On July 14, 1975, counter-defendant CINEMA 7, INC. as lessee and successor to M.B.F.G. Theater Circuit, Inc., and United Artists Theatre Circuit, Inc., as lessor, entered into an "Indenture of Sub-Lease" of the theater and

premises known as "U.A. Theatre" located at 1565 West 17th Street in Santa Ana, California, wherein CINEMA 7 was granted the right "to have and to hold the above-described premises for and during the term commencing with the third day of September, 1975, and ending on the second day of September, 1980. On or about September 3, 1975, CINEMA 7 did commence operating said theater on the above described premises under the name of, "Mitchell Brothers Santa Ana Theater" and has continued to do so up to and including the date of filing of this Counter-claim.

20. Prior to their exhibition, counter-defendant CINEMA 7, as licensee, did enter into a number of film rental agreements with the above described co-partnership of James Mitchell and Artie Mitchell doing business as, "Mitchell Brothers Film Group" wherein the general partnership did license the motion

pictures, "Behind the Green Door," "Resurrection of Eve," "Sodom and Gomorrah," "Inside Marilyn Chambers," "C.B. Mamas," under said film rental agreements, to be exhibited at the Mitchell Brothers Santa Ana Theater which was operated by CINEMA 7. Such film rental agreements were negotiated by James Mitchell and/or Artie Mitchell as booking agents for, and the persons in control of, CINEMA 7, and by James Mitchell and/or Artie Mitchell as co-partners and the persons in control of the general partnership, "Mitchell Brothers Film Group," and as the licensor of such films under the above described exclusive distribution agreements. Pursuant to such film rental agreements, said motion picture films were exhibited at the Mitchell Brothers' Santa Ana Theater on or about the following dates:

"Sodom and Gomorrah"	Sept. 3, 1975 Through Jan. 15, 1976
"Behind the Green Door"	Sept. 3, 1975 through Jan. 15, 1976
"Resurrection of Eve"	Sept. 3, 1975 through Jan. 15, 1976
"Inside Marilyn Chambers"	Jan. 28, 1976
"C.B. Mamas"	May 7, 1976 through May 20, 1976
"Autobiography of a Flea"	Sept. 5, 1976
"Autobiography of a Flea"	Oct. 6, 1976
"Autobiography of a Flea"	Oct. 20, 1976
"Sodom and Gomorrah"	Oct. 20, 1976

Previews to:

"C.B. Mamas"	April 2, 1976 through May 6, 1976

"Sodom and Gomorrah" Feb. 17, 1977

"Sodom and Gomorrah" Mar. 20, 1977

"Autobiography of a Flea" Mar. 20, 1977

"Resurrection of Eve" Aug. 10, 1977

21. Section 703 of the Charter of the City of Santa Ana imposes upon the Office of the City Attorney a duty to represent the City in all legal matters and authorizes the City Council to employ other attorneys to take charge of any litigation or matter or to assist the City Attorney therein. Pursuant to such authority, Keith Gow, the City Attorney of the City of Santa Ana did, on November 10, 1975, communicate by phone with the defendant and counter-claimant, James J. Clancy, regarding the procedures employed by counter-claimant Clancy as attorney for the City of Duarte, California in an abatement action which was then pending in the Los Angeles County

Superior Court. Thereafter, City Attorney Keith Gow and counter-claimant James J. Clancy did meet on November 20, 1975 in the office of the City Attorney of Santa Ana to discuss the investigative procedures employed in the Duarte, California case and the use of similar procedures in Santa Ana and counter-claimant Clancy's services as an attorney to prosecute a similar public nuisance abatement action against the Mitchell Brothers' Santa Ana Theater and the films "Sodom and Gomorrah", "Resurrection of Eve", and "Behind the Green Door", which were then being exhibited at the Mitchell Brothers' Santa Ana Theater. At the end of such meeting, City Attorney Keith Gow stated his intention to recommend to the City Council that such procedures be followed in the City of Santa Ana, and requested the draft of a Santa Ana ordinance patterned

after the Duarte Ordinance and a fee schedule for legal services to be performed by counter-plaintiff Clancy in connection with his services on such project. Counter-claimant Clancy informed City Attorney Keith Gow at such meeting that a copyright claim had been registered as to at least one of such films, "Behind the Green Door" and that, in his opinion, such copyright claim was invalid for the reason that, under copyright law, a valid copyright interest could not be created in an obscene motion picture film such as "Behind the Green Door".

22. Subsequent to November 20, 1975, counter-claimant Clancy did prepare and transmit to City Attorney Keith Gow a fee schedule and the draft of a public nuisance abatement ordinance regarding the commercial exploitation of patently offensive sexual conduct in lewd films

and theaters exhibiting the same, and amendments thereto. Pursuant to an oral agreement between City Attorney Keith Gow and counter-claimant Clancy, counter-claimant Clancy did direct Robert McGuire to pay the admission price and enter the Mitchell Brothers' Santa Ana Theater for the purpose of conducting surveillance photography and making sound recordings of the films "Sodom and Gomorrah", "Resurrection of Eve", and "Behind the Green Door", and on November 28, 1975 and November 29, 1975, Robert McGuire did enter said theater and perform such services. Thereafter, counter-claimant Clancy supervised the preparation of time and motion studies from the photographs and sound recordings made by Robert McGuire and, on December 8, 1975 transmitted the same by personal messenger to City Attorney Keith Gow for the use of the City Council.

23. On January 19, 1976, the Santa Ana City Council duly enacted Santa Ana Municipal Ordinance NS-1287 (Art. III, Lewd Films and Theaters, Exhibiting Lewd Films) entitled "An Ordinance of the City of Santa Ana Adding Sections 12-100 through 12-105 to the Santa Ana Municipal Code Declaring The Commercial Exploitation of Patently Offensive Sexual Conduct in Lewd Films and Theaters Exhibiting The Same To Be A Public Nuisance and Ordering Their Abatement Said ordinance provides a procedure for the abatement of lewd films and theaters exhibiting the same, as public nuisances. A true and correct copy of Ordinance NS-1287 is attached hereto as EXhibit 6 and incorporated by reference herein.

24. On January 19, 1976, the Santa Ana City Council also executed an "Agreement for Legal Services", pursuant to Santa Ana Charter Section 703, wherein

cross-complainant, James J. Clancy, was employed to assist the City Attorney of the City of Santa Ana in the event of litigation arising out of the above-described Ordinance NS-1287.

25. Pursuant to the above described "Agreement for Legal Services", counter-claimant James J. Clancy, or his agent, was orally authorized by Santa Ana City Attorney Keith Gow to conduct time-motion studies at the Mitchell Brothers' Santa Ana Theater for the purpose of providing the City Council of the City of Santa Ana with sufficient information to determine whether a public nuisance exists within the meaning of said Ordinance NS-1287 and for the City's use in prepration for a civil abatement action. Pursuant to such authorization, time-motion studies of the following 26 films exhibited at the Mitchell Brothers' Santa Ana Theater

were thereafter prepared at the direction of counter-claimant Clancy and were circulated to the City Council members at an executive session of the City Council held on or about September 20, 1976, for their consideration in determing whether or not a public nuisance existed within the meaning of Ordinance NS-1287. The time motion studies which are the subject of the First Amended Complaint for copyright infringement herein in Civil Action No. 76-3191-LEW were included as a part of the subject matter which was submitted to the City Council on that date.

PROGRAM	DATE	FEATURE
1	11/28/75	1) Sodom and Gomorrah
		2) Behind the Green Door
1A	11/29/75	3) Resurrection of Eve
2	01/22/76	1) Anyone But My Husband
		2) Previews

		3) Lady on the Couch
3	01/28/76	1) Inside Marilyn Chambers
		2) Previews
		3) The Fireworks Woman
4	02/24/76	1) Mash'd
		2) Previews
		3) Sexteen
5	03/10/76	1) The Milk Lady
		2) Previews
		3) The Milk Lady
6	03/23/76	1) Beneath the Mermaids
		2) Previews
		3) A Touch of Genie
7	04/03/76	1) The Story of Joanna
		2) Previews
		3) Tattoo
		4) Previews
8	06/02/76	1) Previews
		2) Sip the Wine
		3) Teenage Fantasies
9	06/08/76	1) Previews

		2) Honeymoon Sweet
		3) The Defiance
10	06/21/76	1) Carnal Haven
		2) Previews
		3) Love, Lust & Violence
11	07/06/76	1) Previews
		2) The Summer of Laura
		3) Anyone But My Husband
12	08/16/76	1) Married Woman
		2) One of a Kind
13	09/05/76	1) Autobiography of a Flea

26. Prior to October 4, 1976, counter-claimant James J. Clancy did prepare and transmit to City Attorney Keith Gow the draft of certain amendments to Santa Ana Ordinance NS-1287 to conform the same to the decision of the Court of Appeal in People ex rel. Camil v. Buena Vista Cinema, 57 Cal.App. 3d 497, 129 Cal.Rptr. 315 (Apr. 21, 1976). On

October 4, 1976, the Santa Ana City Council adopted such amendments by duly enacting Santa Ana Municipal Ordinance NS-1325. A true and correct copy of Ordinance NS-1325 is attached hereto as Exhibit 7 and incorporated by reference herein.

27. Counter-claimants are informed and believe and, based upon such information and belief allege as a fact that on or about October 12, 1976 and prior to the filing of the Complaint for Copyright Infringement in Civil Action No. 76-3191-LEW herein, counter-defendants were aware that the Santa Ana City Council had enacted Ordinances NS-1287 and NS-1325 into law and knew the contents thereof, and were aware of the investigation then being conducted regarding activities at the Mitchell Brothers' Santa Ana Theater, and were aware that the City Council

was contemplating taking official action against the continued operation of such theaters under said ordinances.

28. The original Complaint of the copyright infringement laws herein entitled "Jartech, Inc., Anatuna, Inc., Cinema 7, Inc., and Mooks, Inc. all California corporations vs. James J. Clancy, Gordon Bricken, James E. Ward, David L. Brandt, David F. Ortiz", No. 76-3191-LEW, as to which this counter-claim is stated, was filed with this Court on Tuesday, October 12, 1976. On that date, counter-defendants caused a summons to be issued in said civil action and thereafter did cause such summons to be personally served on counter-claimants, thereby subjecting them to the jurisdiction of the U.S. District Court for the Central District of California.

29. On October 26, 1976, the City

Council of the City of Santa Ana duly adopted Resolution No. 76-134, entitled "A Resolution of the City Council of the City of Santa Ana Determining that the Real Property and Activity Known as the Mitchell Brothers' Santa Ana Theater, located at 1565 West 17th Street, Santa Ana, California, is in Violation of Ordinance NS-1325 of the City of Santa Ana; Declaring Such Activity to be a Public Nuisance, Revoking All Licenses and Permits, and Ordering Abatement; and Ordering the City Attorney To Take All Steps Necessary To Comply with Section 12-105 of the Santa Ana Municipal Code". A true and correct copy of Resolution No. 76-134 is attached hereto as Exhibit 13 and incorporated by reference herein. Pursuant to that directive, counter-claimant James J. Clancy, acting for and on behalf of the City Attorney of Santa Ana filed a

Complaint in Equity for an Injunction and To Abate a Public Nuisance in the Orange County Superior Court, entitled People ex rel. Keith Gow, City Attorney of the City of Santa Ana, California vs. Mitchell Brothers' Santa Ana Theater, et al., No. 25-65-30 and that case is presently pending in that Court.

30. Pursuant to the above described "Agreement for Legal Services", counter-claimant James J. Clancy has continued to conduct surveillance photography and make sound recordings of the motion picture films being exhibited at the Mitchell Brothers' Santa Ana Theater to the date of this pleading, as a preliminary step in the preparation of time and motion studies of such films for use as evidence in such lawsuit. During that period of time the following attitional programs and motion picture films have been surveilled:

PROGRAM	DATE	FEATURE
14	10/06/76	1) The Story of Joanna
		2) Autobiography of a Flea
15	10/20/76	1) Autobiography of a Flea
		2) Sodom and Gomorrah
16	11/13/76	1) Previews
		2) Oriental Blue
		3) Teenage Nurses
17	11/24/76	1) Previews
		2) Hungry Mouth
		3) My Erotic Fantasies
18	12/26/76	1) Carnal Haven
		2) Previews
		3) Her Last Fling
19	01/20/77	1) Love In Strange Places
		2) Previews
19B	01/30/77	1) Sweet Punkin I Love You
20	02/03/77	1) When A Woman Calls
		2) Previews
		3) Night Pleasures

21	02/17/77	1) Sensations
		2) Previews
		3) Kinkorama
		4) Previews
22	03/15/77	1) French Classmates
		2) Previews
		3) Roller Babies
23	03/20/77	1) Sodom and Gomorrah
		2) Previews
		3) Autobiography of a Flea
24	03/30/77	1) Teenage Cruisers
		2) Previews
		3) High School Fantasies
25	04/13/77	1) Previews
		2) French Blue
		3) Overnight Sensations
26	04/30/77	1) Three Shades of Flesh
		2) Confessions of Linda Lovelace
		3) Previews

27	05/11/77	1) Previews
		2) Sensations
		3) Pony Girls
28	05/26/77	1) Sharon
		2) Previews
		3) Sensuous Vixens
29	06/08/77	1) Oriental Treatment
		2) Previews
		3) A Dirty Western
30	06/22/77	1) Liquid Lips
		2) Tell Them Johnny Wadd Is Here
		3) Previews
31	07/06/77	1) Sweetcakes
		2) Honeypie
		3) Previews
32	08/10/77	1) Resurrection of Eve
		2) Lollipop Palace
		3) Previews
33	08/31/77	1) The Second Coming Of Eve
		2) Previews

		3) Visions of Claire
34	09/14/77	1) Previews
		2) Valerie
		3) The Porn Brokers

31. Exclusive jurisdiction to determine the validity of the alleged copyrights in the motion pictures, "Behind the Green Door," "Resurrection of Eve," "Sodom and Gomorrah," "Inside Marilyn Chambers," "Autobiography of a Flea," and "C.B. Mamas," is conferred upon this Court by U.S.C., section 1338 and 28 U.S.C., section 2201.

32. An accurate continuity (scenario) containing photographs and the dialogue of the above described six motion picture films is attached hereto as Exhibits 1 through 5 and made a part hereof as though set forth herein in full. Each of said "continuities" is an accurate reproduction of the sound

portion of the film, identifying the actors, their roles and what they say as the film progresses. Visual screen depictions are recorded by still camera photographs reproducted at the exact point in the dialogue where such images appear, creating a miniature screen effect. The story line is timed from beginning to end to identify those scenes in point of time.

33. A true and correct copy of the time and motion studies for the films, "Behind the Green Door," "Resurrection of Eve," "Sodom and Gomorrah," "Inside Marilyn Chambers," and "Autobiography of a Flea," was filed as Exhibits 8 through 12 of "Defendants' Joint Answer to Plaintiffs' First Amended Complaint for Copyright Infringement and Counterclaim," filed October 25, 1977, and is incorporated herein by reference as though

set forth in full. A true and correct copy of the time-motion study for the film "C.B. Mamas," is filed concurrently herewith as Exhibit 13, and is incorporated herein by reference as though set forth in full. Each of said time and motion studies consists of a chronological series of photographs timed in their relative order of appearance, which photographs fairly and accurately depict the sexual conduct visually portrayed on the motion picture screen at the Mitchell Brothers' Santa Ana Theater during the above mentioned dates when such photographs were taken.

34. A present and continuing actual controversy which necessitates judicial determination by this Federal District Court exists between the counter-claimants and the counter-defendants named in this action, which affects their mutual legal

rights, duties and obligations in that, contrary to the claims of counter-defendants:

(a) Counter-claimants allege and contend that the motion pictures "Behind the Green Door," "Resurrection of Eve," "Sodom and Gomorrah," "Inside Marilyn Chambers," "Autobiography of a Flea,"and "C.B. Mamas" are hard-core pornography under the laws of the United States and that counter-defendants do not have a valid copyright in such motion pictures, nor can counter-defendants obtain a copyright thereto, because the same are hard-core pornography and obscene per se and contraband and, as such, are uncopyrightable subject matter under federal law.

(b) Counter-claimants allege and contend that the counter-defendants do not have a valid copyright in such

motion pictures, nor can counter-defendants obtain a copyright thereto in that the circumstances of production, distribution and exhibition of such films by the Mitchell Brothers as an integral part of their principal business of dealing in hard-core pornography establishes that the production of such films does not promote the progress of science and the useful arts and, therefore, such films are uncopyrightable as a matter of law.

(c) Counter-claimants allege and contend that the conduct engaged in, and the method of preparation and use of the time-motion studies, as hereinabove described, does not infringe upon, or violate, any right title or interest of the counter-defendants.

(d) Counter-claimants allege and contend that the motion picture films "Behind the Green Door," "Resurrection

of Eve," "Sodom and Gomorrah," "Inside Marilyn Chambers," "Autobiography of a Flea," and "C.B. Mamas" are contraband and the use to which the plaintiffs and their agents and their employees are making of such motion pictures is illegal and unlawful under the laws of the United States and the counter-defendants are not entitled to an injunction restraining the counter-plaintiffs from infringing the alleged copyright as prayed for. Further, counter-claimants allege and contend that the counter-defendants should be required to deposit in Court the negative and all positive prints of such motion pictures and forfeit the same as contraband.

WHEREFORE Defendants and Counter-claimants and each of them pray:

1. That plaintiffs and each of them take nothing by reason of their

complaint on file herein;

2. That the complaint be dismissed;

3. That Judgment be entered against plaintiffs and counter-defendants and in favor of Defendants and Counter-claimants on their Counterclaim, and that the court award to Defendants and Counter-claimants attorney fees and costs of suit incurred herein.

4. That the Court declare the copyrights described herein to be invalid and the motion pictures "Behind the Green Door," "Resurrection of Eve," "Sodom and Gomorrah," "Inside Marilyn Chambers," "Autobiography fo a Flea," and "C.B. Mamas" to be hard-core pornography and unlawful property and contraband.

5. That the Court declare that the conduct engaged in and the method of preparation and use of the time-motion studies by the counter-claimants, as

hereinabove described, does not infringe upon, or violate, any right title or interest of the counter-defendants.

6. That the Court order a deposit of the negatives and all positive prints of such films to be made in Court and the same forfeited as contraband.

7. For such other and further relief as the Court deems necessary.

DATED: May 8, 1978.

JAMES J. CLANCY
Attorney for
Defendants and
Counter-claimants.

VERIFICATION

STATE OF CALIFORNIA)
: ss.
COUNTY OF LOS ANGELES)

I, JAMES J. CLANCY, being duly sworn, depose and say that I reside in Los Angeles, California; that I am a Defendant in the foregoing action; and that I have read the foregoing counterclaim and know the contents thereof, and that the same are true of my own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe them to be true.

_____

JAMES J. CLANCY

STATE OF CALIFORNIA)

: ss.

COUNTY OF LOS ANGELES)

On May 8, 1978, before me, the undersigned, a Notary Public in and for said State, personally appeared JAMES J. CLANCY, known to be to be the person

whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

WITNESS my hand and official seal.

Jean Marie Scritchfield

Notary Public in and for said State.

Law Office of Joseph Rhine
2424 Pine Street
San Francisco, CA 94115
(415) 563-7705

Attorneys for Plaintiffs
and Counter-Defendants

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JARTECH, INC., ANATUNA, INC., CINEMA 7, INC., and MOOKS, INC., all California corporations, Plaintiffs, vs. JAMES J. CLANCY, GORDON BRICKEN, JAMES E. WARD, DAVID L. BRANDT, DAVID F. ORTIZ, Defendants.	Civil Action No. 76-3191-LEW PLAINTIFFS' AND COUNTER-DEFENDANTS' ANSWER TO AMENDED COUNTER-CLAIM

FILED
JUL 7 1978
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT
OF CALIFORNIA BY

JAMES J. CLANCY, GORDON BRICKEN, JAMES E. WARD, DAVID L. BRANDT,

DAVID F. ORTIZ,

Counter-claimants,

vs.

JARTECH, INC., ANATUNA, INC., CINEMA 7, INC., MOOKS, INC., all California corporations, JAMES MITCHELL, ARTIE MITCHELL, MITCHELL BROTHERS' FILM GROUP, a general partnership,

Counter-defendants.

_____ DEPUTY

COME NOW the plaintiffs and counter-defendants in this cause and file this their "Answer to Defendants' Amended Counter-claim," and in support of said pleading respectfully shows to this Court the following:

1. Plaintiffs and counter-defendants admit the truth of the allegation contained in Paragraphs 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 24, 25, 28, 30, and 31.

2. In answer to Paragraph 6,

plaintiffs and counter-defendants deny that JAMES MITCHELL and ARTIE MITCHELL were and are now the alter-ego of the corporate defendants, or that they have so dominated, influenced or controlled such corporate defendants that the individuality and separateness of the various defendants has ceased, or that recognition of such separateness would in any way tolerate a fraud or promote an injustice.

3. In answer to Paragraph 23, plaintiffs and counter-defendants deny that Santa Ana Municipal Ordinance N.S. 1287 was duly enacted on January 19, 1976, or at any other time.

4. In answer to Paragraph 26 of the counter-claim, plaintiffs and counter-defendants deny that the purpose of the amendment submitted to the City Attorney was to conform to the decision of the

Court of Appeal in People ex rel. Camile v. Buena Vista Cinema (1976) 57 Cal.App.3d 497, 129 Cal.Rptr. 315. Plaintiffs and counter-defendants further deny that Ordinance NS 1325 was duly enacted by the Santa Ana City Council.

5. In answer to Paragraph 27 of the Counterclaim, plaintiffs and counter-defendants deny that prior to October 12, 1976, and prior to the filing of the complaint for copyright infringement in this action, that they were aware of the enactment of Ordinances NS 1287 and NS 1325, or that they knew the contents thereof, but admit that they had knowledge of newspaper reports to that effect.

6. In answer to Paragraph 29 of the Complaint, plaintiffs and counter-defendants deny the allegation that Resolution No. 76-134 was duly adopted by the City of Santa Ana, and further

deny that the action known as People ex rel. Keith Gow, City Attorney of the City of Santa Ana, California, v. Mitchell Brothers' Santa Ana Theater, et al., case number 25-65-30, is presently pending before the Superior Court of the County of Orange, State of California. Said action is presently pending before the Court of Appeal and no longer before the trial court.

7. In answer to Paragraph 32 of the Counterclaim, plaintiffs and counter-defendants deny that Exhibits 1 through 5 attached to the Amended Counterclaim are accurate continuities of the six motion picture films involved herein. Plaintiffs and counter-defendants admit all other allegations of said Paragraph.

8. In answer to Paragraph 33, plaintiffs and counter-defendants deny that Exhibits 8 through 12, and Exhibit 13,

fairly and accurately depict the sexual conduct visually portrayed on the motion picture screen at the Mitchell Brothers' Santa Ana Theater, but admit all further allegations therein.

FIRST AFFIRMATIVE DEFENSE

As and for a First Affirmative Defense and Separate Defense, plaintiffs and counter-defendants allege that defendants' Amended Counterclaim fails to state a cause of action.

WHEREFORE, plaintiffs and counter-defendants and each of them pray:

1. That defendants' and counter-claimants take nothing by reason of their counterclaim on file herein;

2. That the counterclaim be dismissed;

3. That jugment be entered against defendants and counter-claimants and in favor of plaintiffs and counter-

defendants on the counterclaim, and that the Court award to plaintiffs and counter-defendants attorney's fees and costs of suit incurred herein.

4. For such other and further relief as the Court deems appropriate.

Date: July 3, 1978 at San Francisco California

LAW OFFICE OF JOSEPH RHINE

By /s/ Robert L. Thorp
ROBERT L. THORP
Attorneys for Plaintiffs and Counter-defendants

VERIFICATION

STATE OF CALIFORNIA)
) SS:
CITY AND COUNTY OF SAN FRANCISCO)

I, JAMES MITCHELL, being duly sworn, depose and say that I reside in San Francisco, California; that I am a plaintiff and counter-defendant in the foregoing action, a general partner in plaintiff and counter-defendant partnership, Mitchell Brothers Film Group, and an officer of plaintiff and counter-defendant corporations, Jartech, Inc., Anatuna, Inc. Cinema 7, Inc., and Mooks, Inc., and that I have read the foregoing answer to defendants' amended counterclaim and know the contents thereof, and that the same are true of my own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe them to be true.

Dated: July 3, 1978.

/s/ James Mitchell
JAMES MITCHELL

Before me, the undersigned, a notary public in and for the State of California, personally appeared James Mitchell known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same. Witness my hand and official seal this 3rd day of July, 1978.

SEAL

/s/ Robert L. Thorp
ROBERT L. THORP, Notary Public

APPENDIX D

(Reference: Petition at pgs. 6, 10, 11, 13, 60)

Time and Motion Studies* of the motion picture films for which the Register of Copyrights in the U.S. Copyright Office issued a "Certificate of Registration of a Claim to Copyright" and as to which the City Council made alleged infringing copies pursuant to Santa Ana Ordinance N.S. 1287 and Resolution 76-134,

Behind the Green Door	D-1 thru D-27
Resurrection of Eve	D-29 thru D-59
Sodom and Gomorrah - The Last Seven Days	D-61 thru D-97
The Autobiography of A Flea	D-99 thru D-133
C.B. Mamas	D-135 thru D-155
Inside Marilyn Chambers	D-157 thru D-185

* A time-motion study is a chronological series of still photographs of a motion picture film, timed in their relative order of appearance, which, by "stopping" the movement appearing on the motion picture screen and recording the same, permits the type of conduct being portrayed thereon to be analyzed in a fair and accurate manner. Photographs have been taken every 3.6 seconds playing time.

APPENDIX D

TIME-MOTION STUDY* OF THE FILM

"BEHIND THE GREEN DOOR"

The motion picture film "Behind the Green Door" was issued a "Certificate of Registration of a Claim to Copyright" by the Copyright Office on April 18, 1973.

* A time-motion study is a chronological series of still photographs of a motion picture film, timed in their relative order of appearance, which, by "stopping" the movement appearing on the motion picture screen and recording the same, permits the type of conduct being portrayed thereon to be analyzed in a fair and accurate manner. Photographs have been taken every 3.6 seconds playing time.

"BEHIND THE GREEN DOOR": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 24594) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO JARTECH, INC. (DATE OF ISSUANCE: APRIL 18, 1973).

"BEHIND THE GREEN DOOR"
PART 1 OF 13 PARTS
(0:17-0:24) OPENING SCENE. MALE DRIVING A VEHICLE. (0:30-1:16) SCENE SHIFTS TO INSIDE A ROADSIDE DINER. (1:19-2:13) TWO MALES SEATED IN DINER TALK WITH CHEF AS WAITRESS SERVES THEM. ONE MALE RELATES STORY. (2:15-3:27) A FLASH BACK. A SMALL CONVERTIBLE SPORTS CAR APPEARS WITH GIRL DRIVING ON WINDING ROAD AS FILM CREDITS AND TITLE APPEAR. (3:31-3:45) GIRL ARRIVES AT A RESORT AND IS GREETED BY MAN BEHIND COUNTER. (3:48-5:54) TWO MEN WHO WERE AT DINER ARE SEATED TALKING IN RESORT OPEN DINING AREA. GIRL WHO ARRIVED ENTERS SCENE AND SITS AT TABLE.

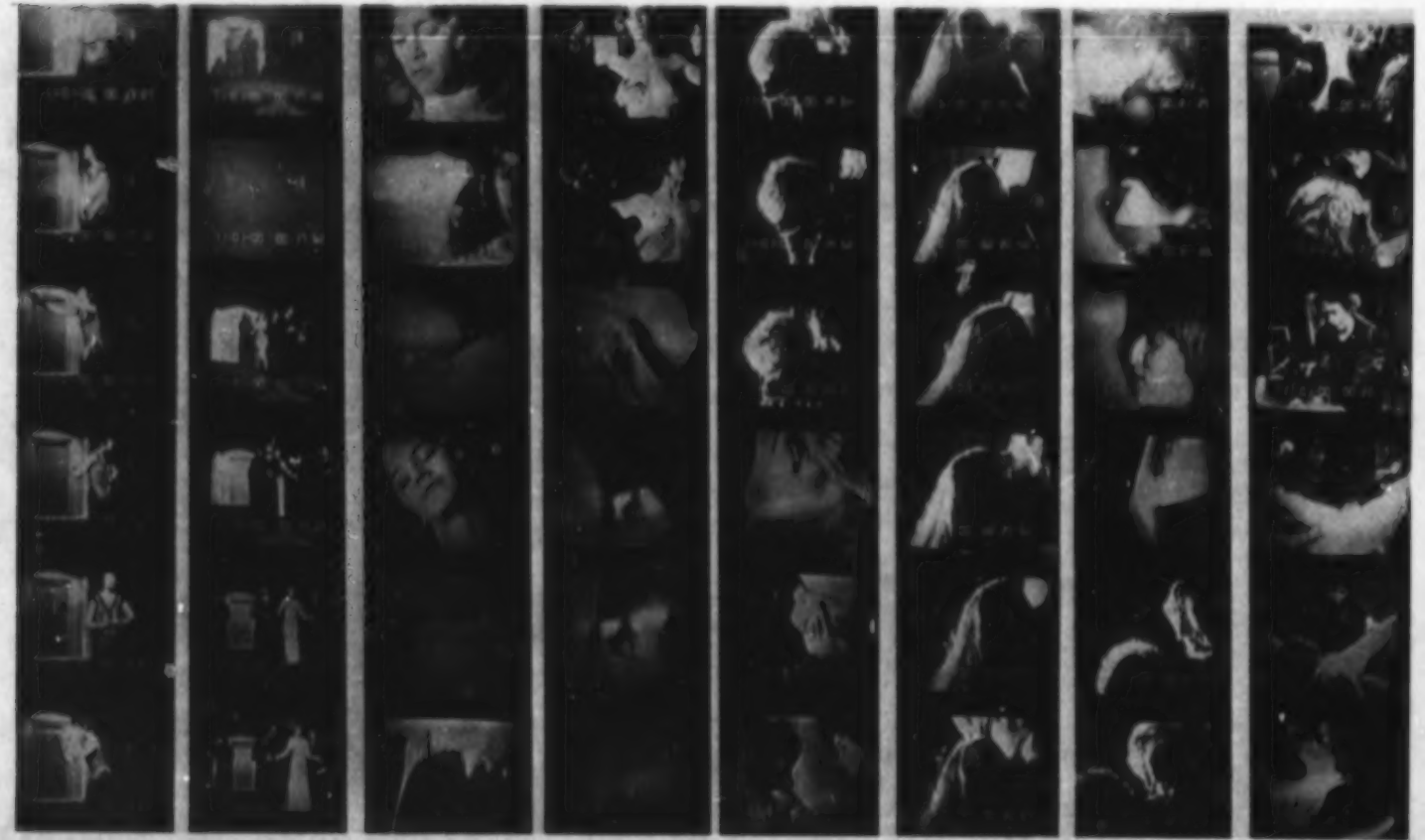
"BEHIND THE GREEN DOOR": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 24594) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO JARTECH, INC. (DATE OF ISSUANCE: APRIL 18, 1973).

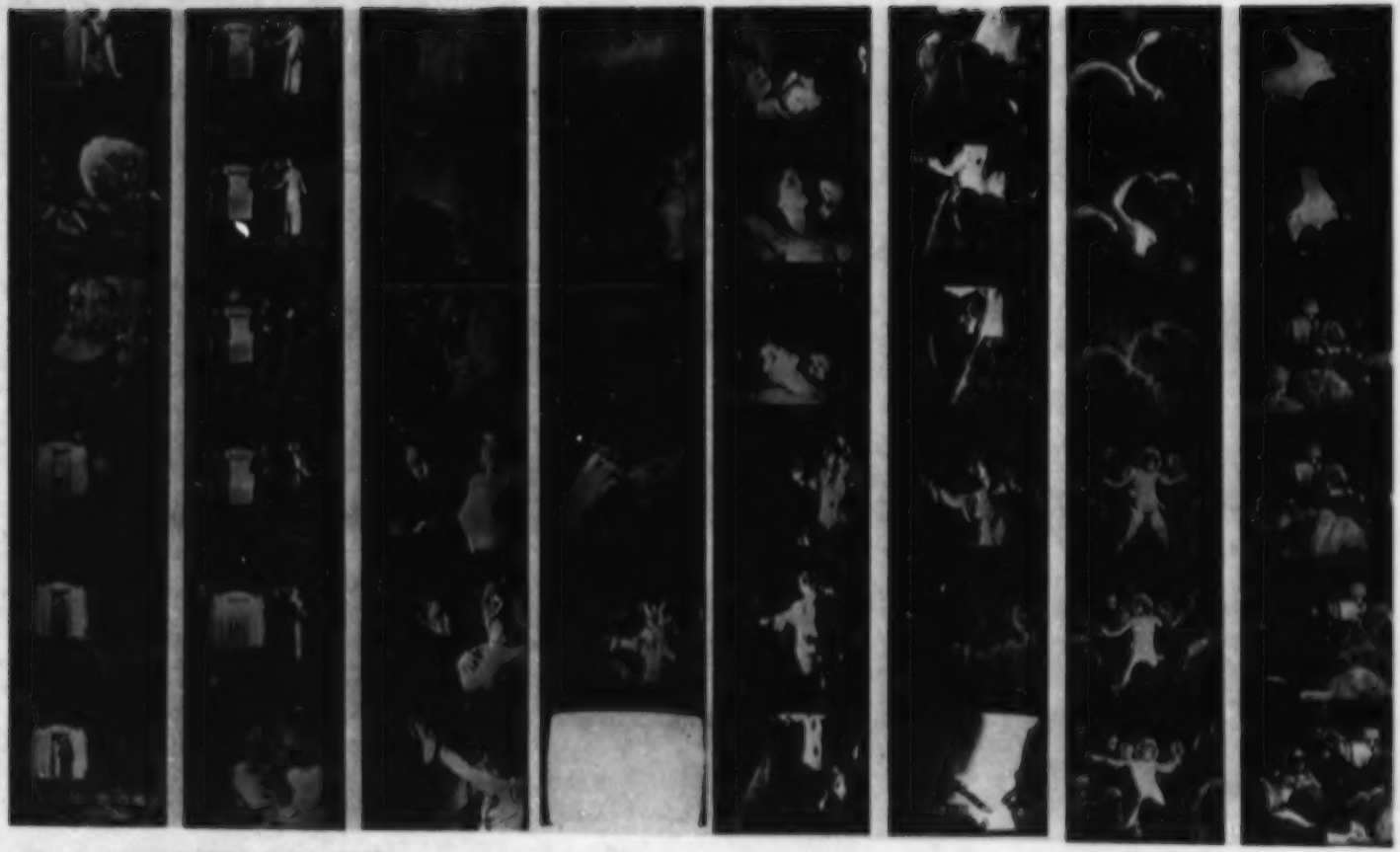
"BEHIND THE GREEN DOOR"
PART 2 OF 13 PARTS
(5:58-7:19) TWO MEN CONTINUE TALKING. (7:21-7:46) NIGHT SCENE - WOMAN DESCENDS OUTSIDE STAIRWAY. AUTO STOPS - MEN GET OUT AND FORCE WOMAN INTO CAR. ONE OF TWO ABDUCTORS RUNS AFTER AUTO SHOUTING "HEY, YOU SON-OF-A-BITCH, STOP!" (7:49-9:37) TWO MEN ENTER LARGE PLUSH-LIKE ROOM OR FOYER OF A NIGHT CLUB AND ARE MET BY LARGE THIRD MAN WHO BURSTS A FOOTBALL WITH BAREHANDS AFTER ASKING THE TWO MEN THEIR NAMES, PUTS MASKS ON THEM AND ORDERS A WOMAN TO SHOW THEM TO THRIR SEATS. (9:41-10:19) CAMERA PANS INTERIOR OF CLUB. CLOWN IS PERFORMING ON STAGE. (10:23-10:43) AUTO ENTERS ALLEY AND STOPS. TWO MEN AND ABDUCTED WOMAN GET OUT OF AUTO AND ENTER BUILDING. (10:47-11:18) ABDUCTED GIRL IS BROUGHT INTO ROOM WITH ANOTHER WOMAN WHO ORDERS THE TWO ABDUCTORS TO LEAVE. (11:22-11:29) SECOND WOMAN TALKS TO ABDUCTED VICTIM.

"BEHIND THE GREEN DOOR": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 24594) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO JARTECH, INC. (DATE OF ISSUANCE: APRIL 18, 1973).

"BEHIND THE GREEN DOOR"
PART 3 OF 13 PARTS
(11:32-15:22) WOMAN CONTINUES TO CALM AND SOOTHE THE FEMALE VICTIM BY TALKING TO HER AND FONDLING HER. (15.26-17:03) CLOWN PERFORMING IN PANTOMIME AS AUDIENCE WATCHES.

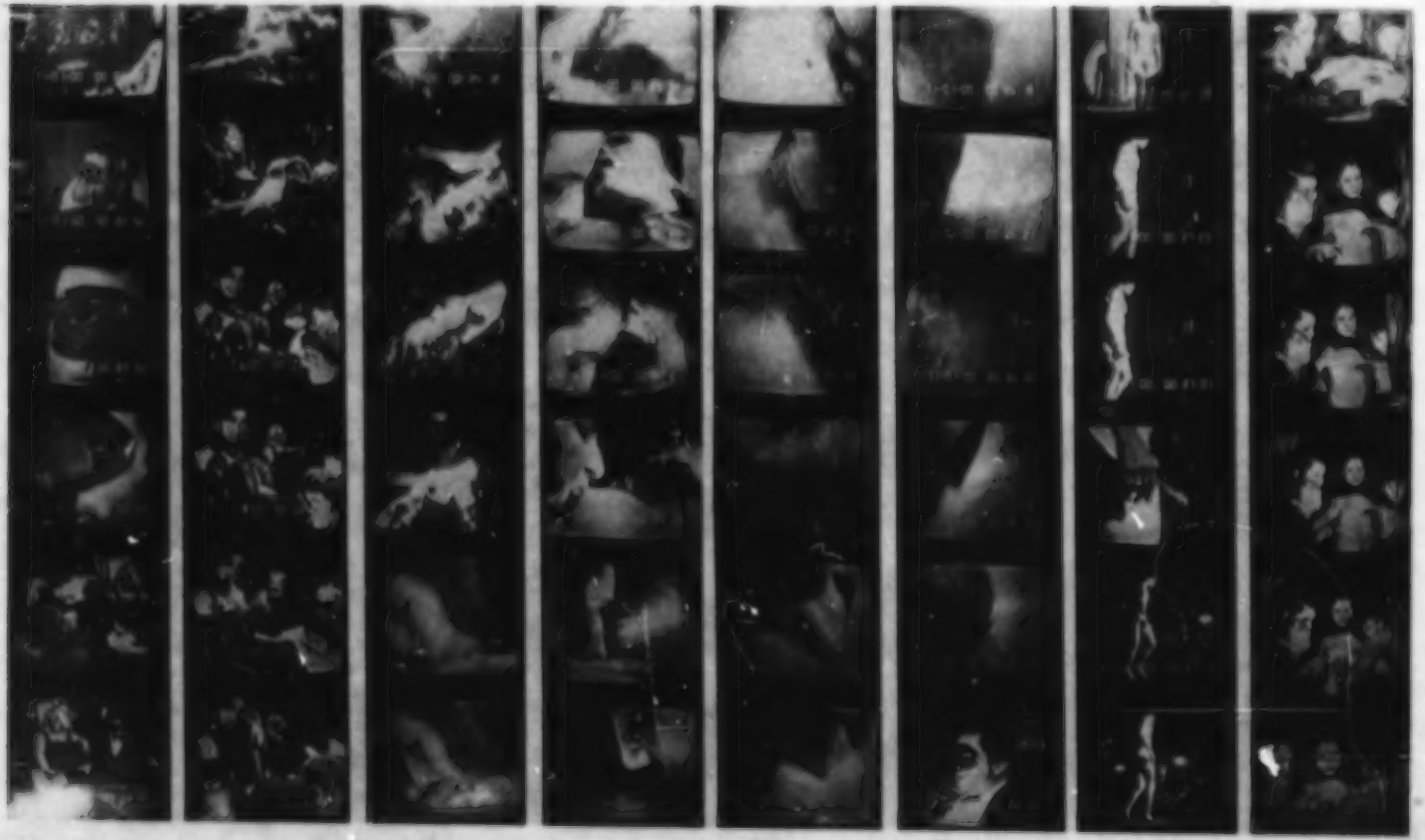
"BEHIND THE GREEN DOOR": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 24594) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO JARTECH, INC. (DATE OF ISSUANCE: APRIL 18, 1973).

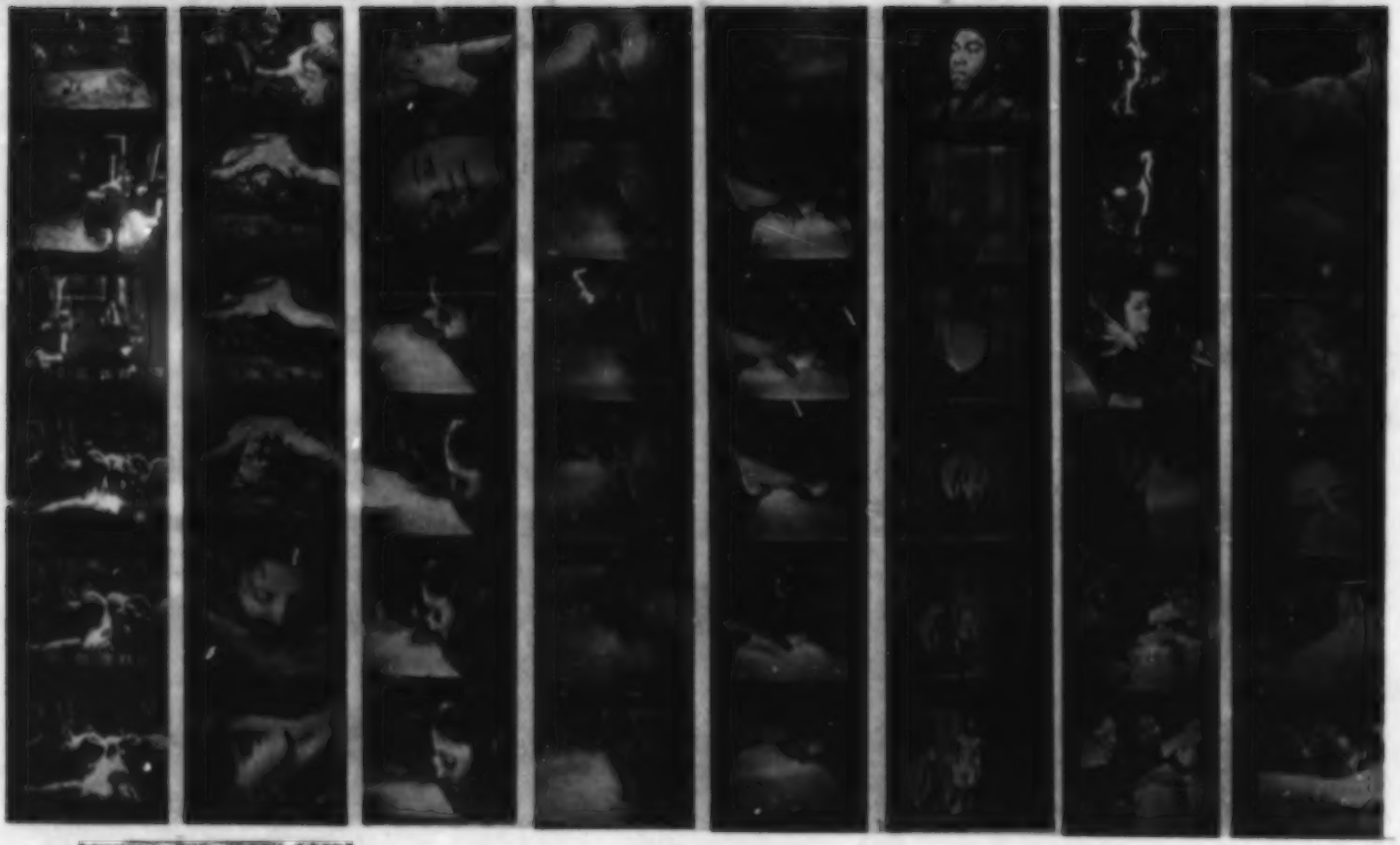




"BEHIND THE GREEN DOOR"
PART 4 OF 13 PARTS
(17:07-18:24) SPOTLIGHT FOCUSES ON GREEN DOOR, WHICH OPENS. ABDUCTED GIRL IS LED OUT BY SEVERAL MEN IN ROBES TO CENTER STAGE. (18:24-22:14) GIRL IS DISROBED BY OTHER WOMEN AND FONDLED AND KISSED AS AUDIENCE WATCHES. (22:17-22:31) GIRL IS RESTRAINED BY SEVERAL WOMEN AS ANOTHER WOMAN PERFORMS CUNNILINGUS ON HER. (22:35-22:46) CAMERA SHIFTS FROM VICTIM TO AUDIENCE AND BACK SHOWING AUDIENCE REACTION.

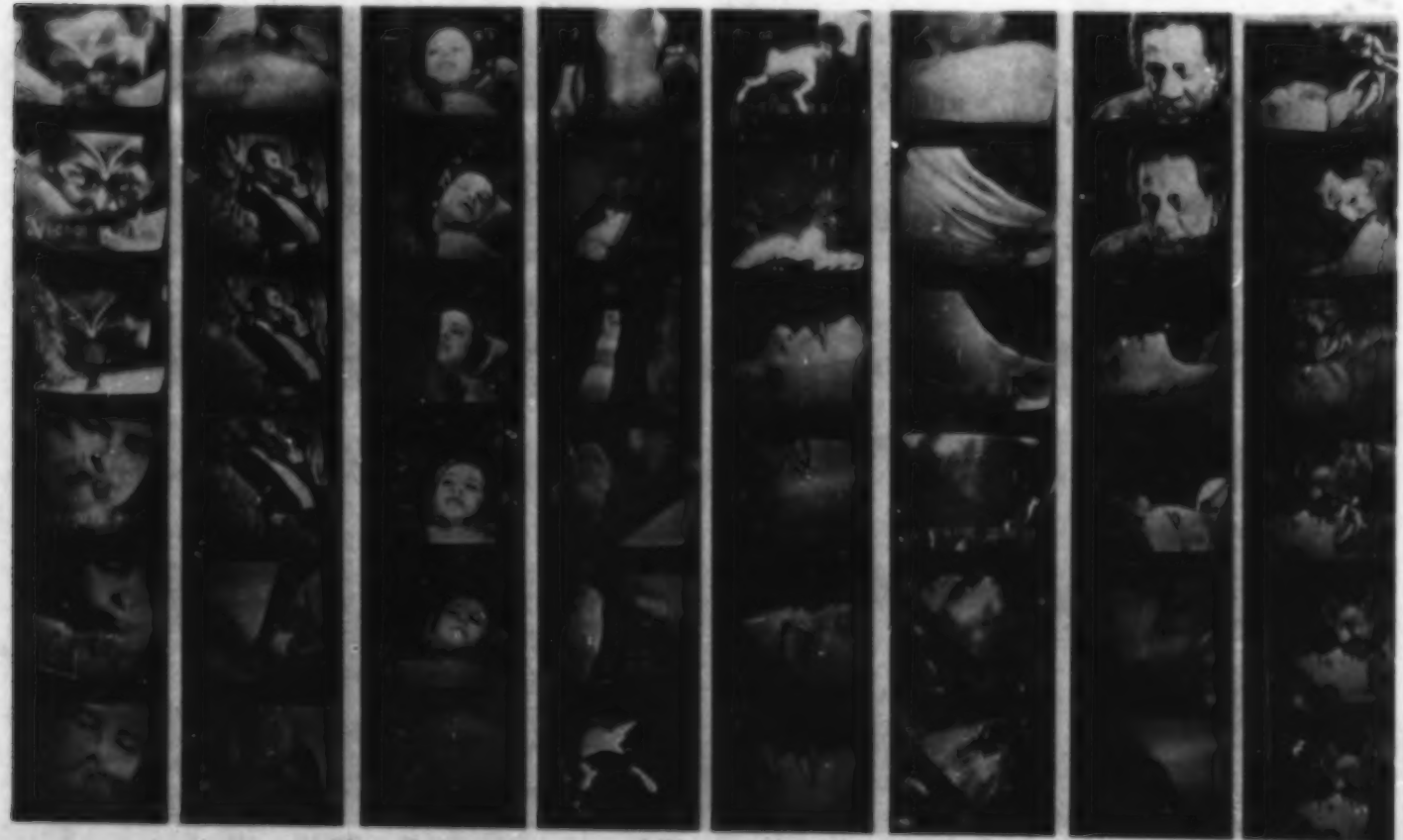
"BEHIND THE GREEN DOOR": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 24594) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO JARTECH, INC. (DATE OF ISSUANCE: APRIL 18, 1973).





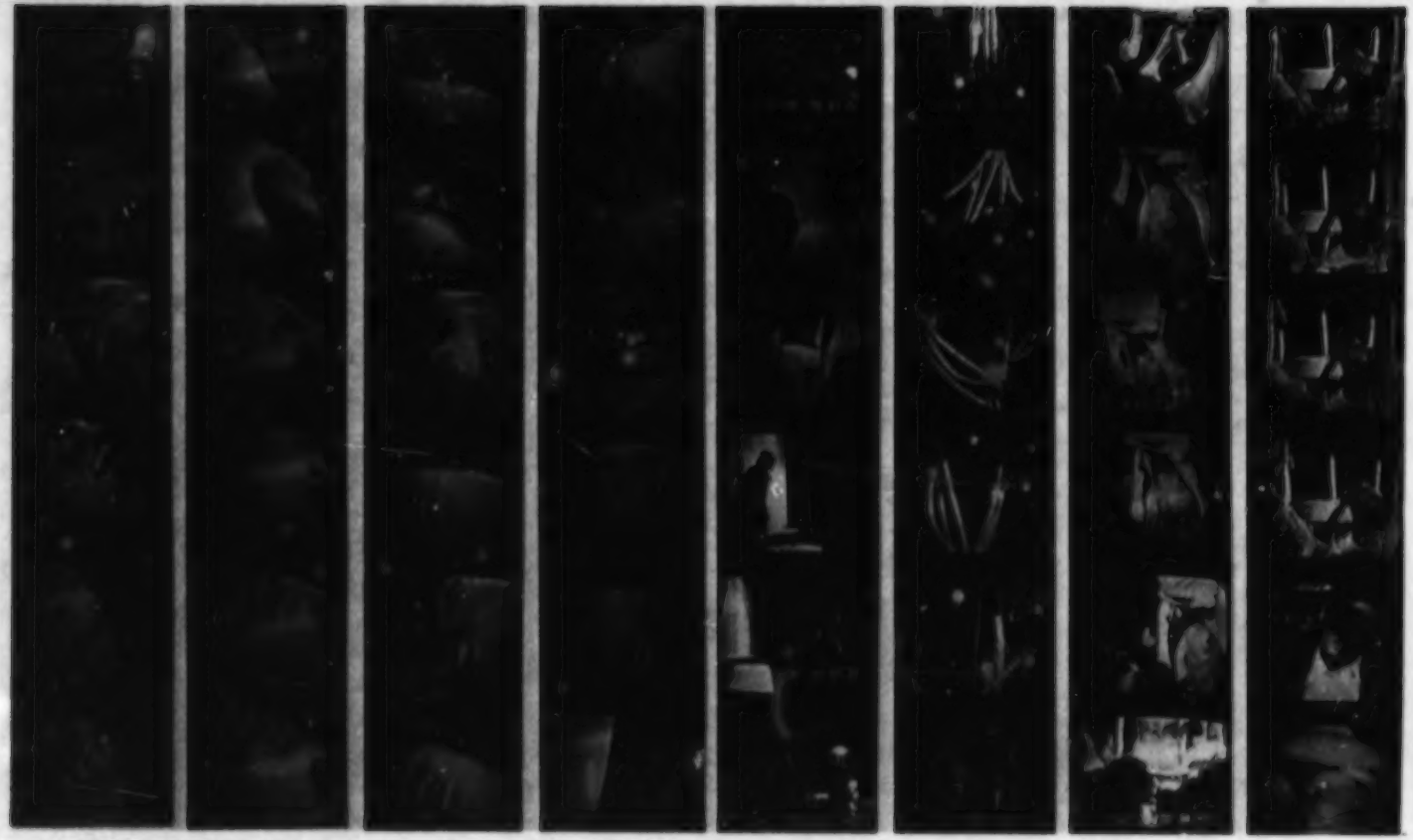
"BEHIND THE GREEN DOOR"
PART 5 OF 13 PARTS
(22:49-26:35) AUDIENCE CONTINUES TO WATCH AS GIRL VICTIM IS HELD SPREAD EAGLED ON HER BACK ON STAGE FLOOR AS SEVERAL OTHER FEMALES KISS AND SUCK HER BREASTS AND ANOTHER FEMALE PERFORMS CUNNILINGUS ON HER. (26:39-28:20) BLACK MALE ENTERS STAGE WITH PENIS EXPOSED THROUGH PANTS WITH CUTOUT, AND APPROACHES RESTRAINED VICTIM ON FLOOR. OTHER WOMEN DIRECT MALE TO VICTIM'S VAGINA.

"BEHIND THE GREEN DOOR": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 24594) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO JARTECH, INC. (DATE OF ISSUANCE: APRIL 18, 1973).



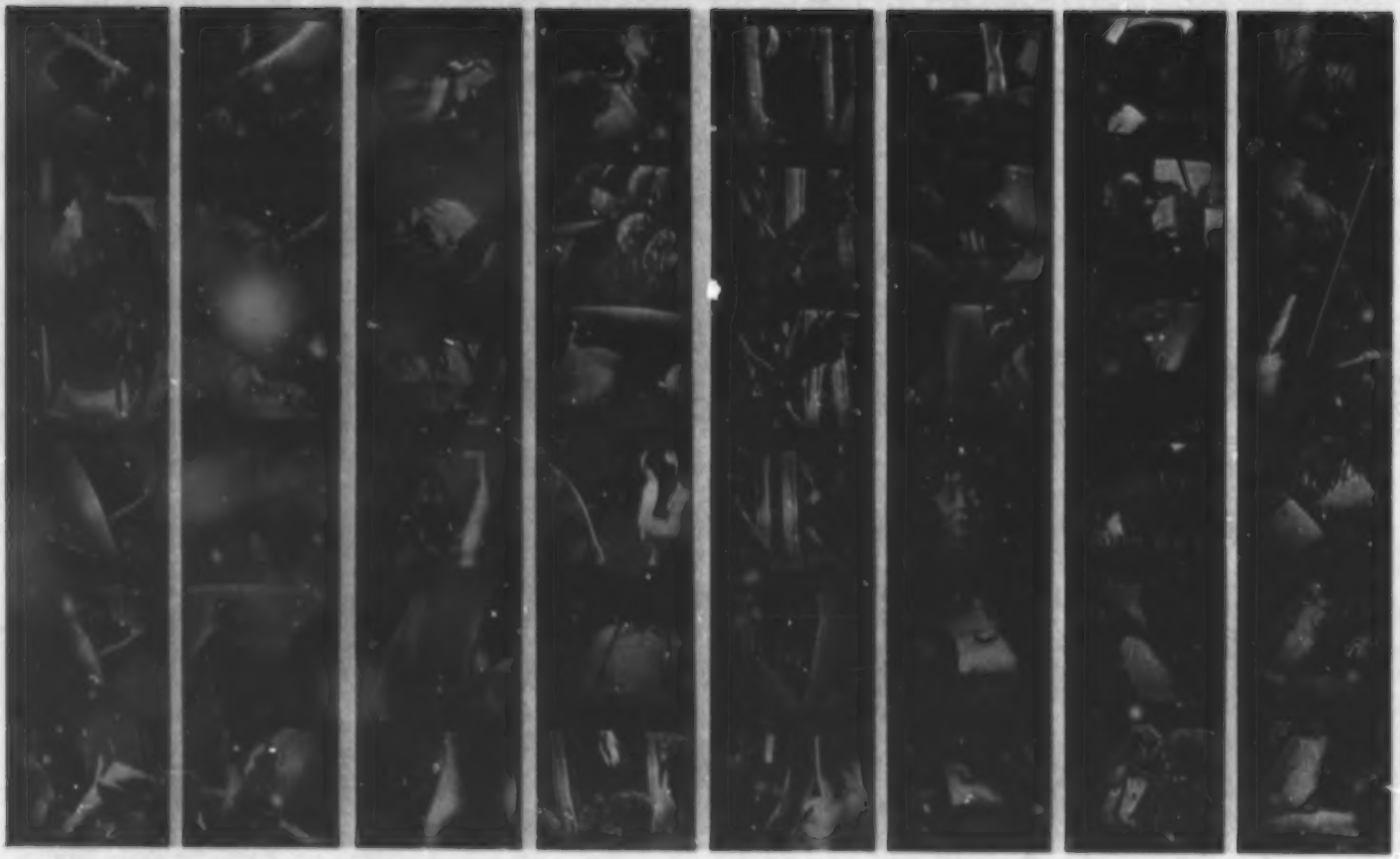
"BEHIND THE GREEN DOOR"
PART 6 OF 13 PARTS
(28:24-29:16) WOMEN HOLD VICTIM ON FLOOR AS MALE PERFORMS CUNNILINGUS ON HER AS AUDIENCE WATCHES.
(29:19-33:54) CLOSEUP OF MALE PENIS ENTERING VAGINA OF VICTIM. MALE PERFORMS SEXUAL INTERCOURSE WHILE FEMALE WRITHES ON FLOOR STILL HELD BY OTHER FEMALES.

"BEHIND THE GREEN DOOR": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 24594) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO JARTECH, INC. (DATE OF ISSUANCE: APRIL 18, 1973).



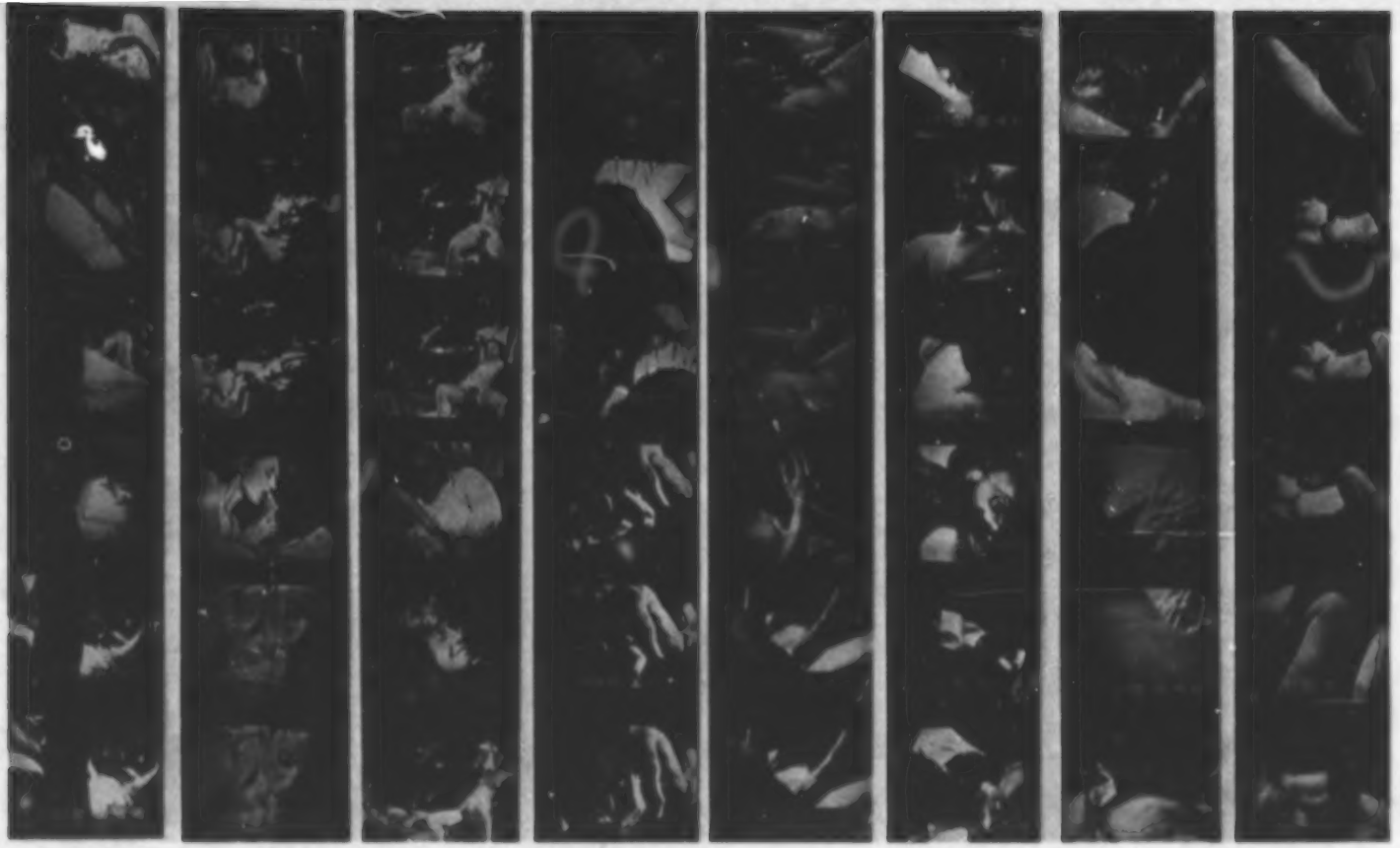
"BEHIND THE GREEN DOOR"
PART 7 OF 13 PARTS
(33:59-36:42) MALE PERFORMS SEXUAL INTERCOURSE TO RHYTHM OF BONGO DRUMS BRINGING VICTIM TO CLIMAX. (36:45-36:56) CAMERA SHOWS AUDIENCE REACTION -- ONE WOMAN MASTURBATES. (36:59-37:44) BLACK MALE EXITS STAGE. AUDIENCE ANTICIPATES NEXT ACT. (37:48-39:22) THREE MAN TRAPEZE DEVICE IS LOWERED FROM CEILING. THREE MEN MOUNT IT WITH PENISES EXPOSED. (39:29) CLOSEUP OF A WOMAN IN AUDIENCE MASTURBATING WITH HER FINGERS WHILE VIEWING STAGE ACTIVITY.

"BEHIND THE GREEN DOOR": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 24594) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO JARTECH, INC. (DATE OF ISSUANCE: APRIL 18, 1973).



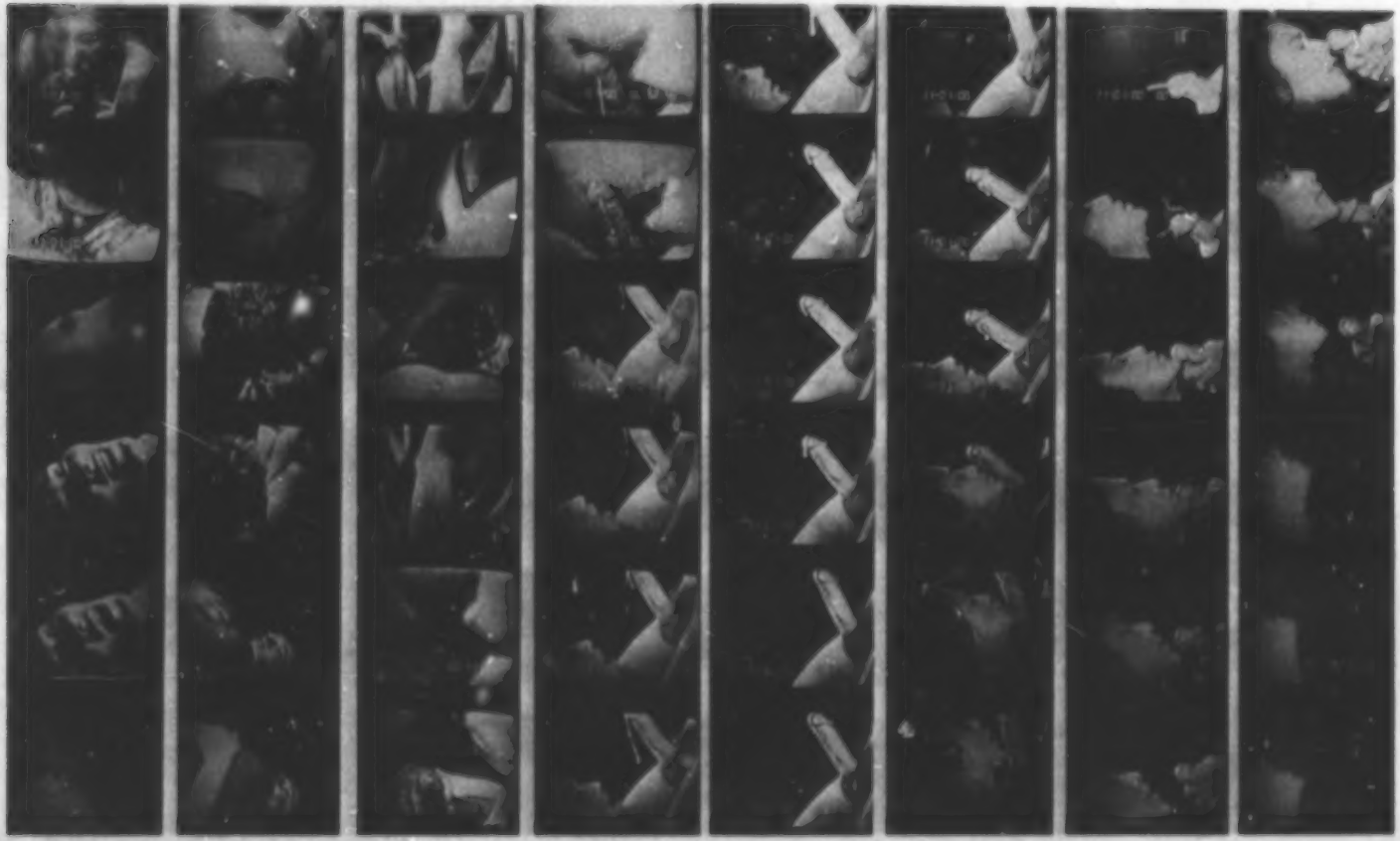
"BEHIND THE GREEN DOOR"
PART 8 OF 13 PARTS
(39:53-41:45) VICTIM IS TAKEN TO CENTER OF TRAPEZE WITH THREE MALES. SHE THEN MASTURBATES TWO MALES WHILE ALSO PERFORMING FELLATIO ON THIRD MALE. (41:48-41:59) ANOTHER FEMALE IN AUDIENCE FONDLES HER OWN BREAST AS SHE VIEWS STAGE. (42:02-45:03) VICTIM CONTINUES TO MASTURBATE TWO MALES WHILE PERFORMING FELLATIO ON THIRD MALE. WHILE FOURTH MALE PERFORMS SEXUAL INTERCOURSE ON HER FROM BENEATH HER. AUDIENCE ENGAGES IN SEXUAL ACTIVITY.

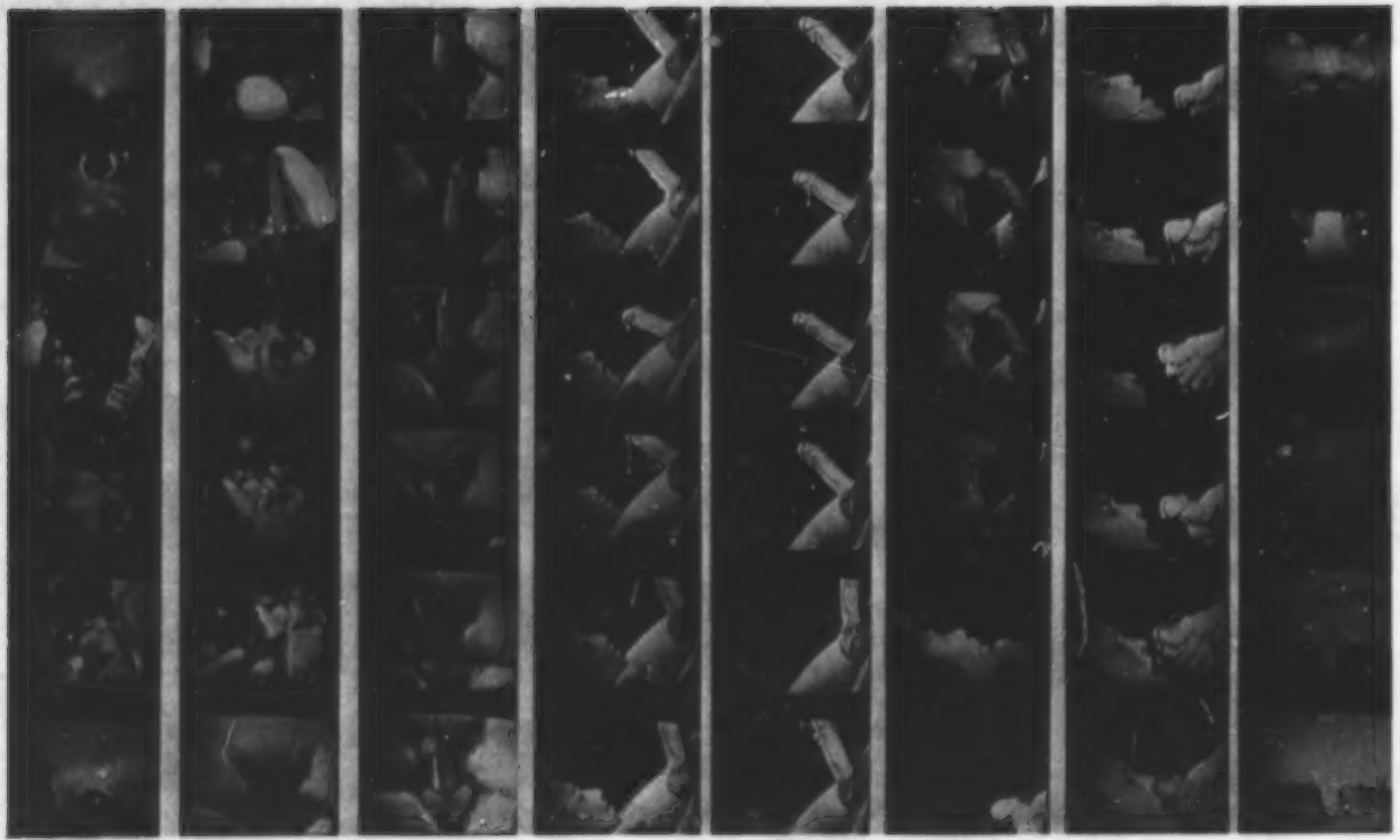
"BEHIND THE GREEN DOOR": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 24594) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO JARTECH, INC. (DATE OF ISSUANCE: APRIL 18, 1973).



"BEHIND THE GREEN DOOR"
PART 9 OF 13 PARTS
(45:07-47:50) SEXUAL INTERCOURSE - CUNNILINGUS. (47:54-50:38) AUDIENCE ENGAGES IN SEXUAL ACTIVITY. MASTURBATION, CUNNILINGUS, FELLATIO, GROUP ORGY.

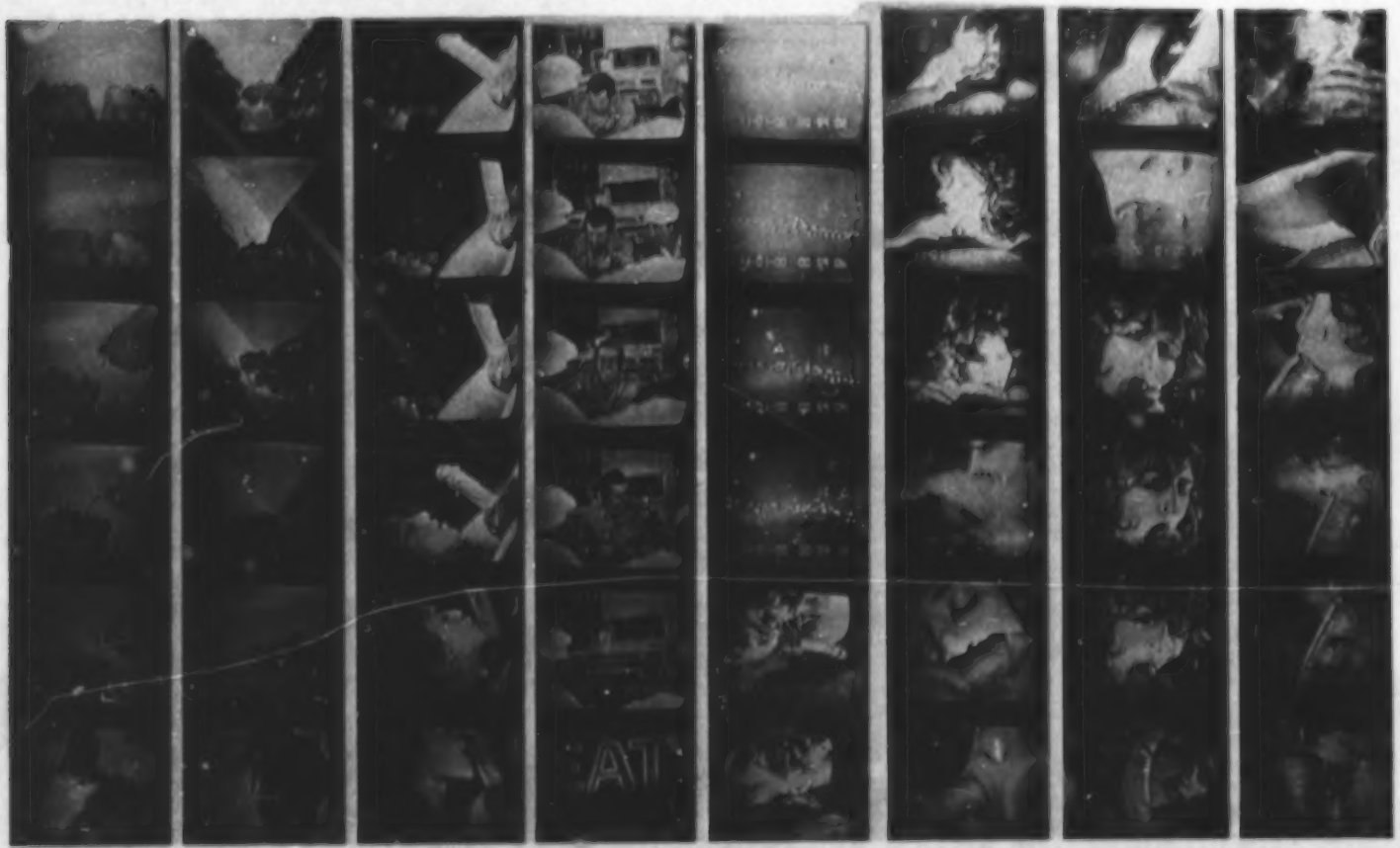
"BEHIND THE GREEN DOOR": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 24594) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO JARTECH, INC. (DATE OF ISSUANCE: APRIL 18, 1973).

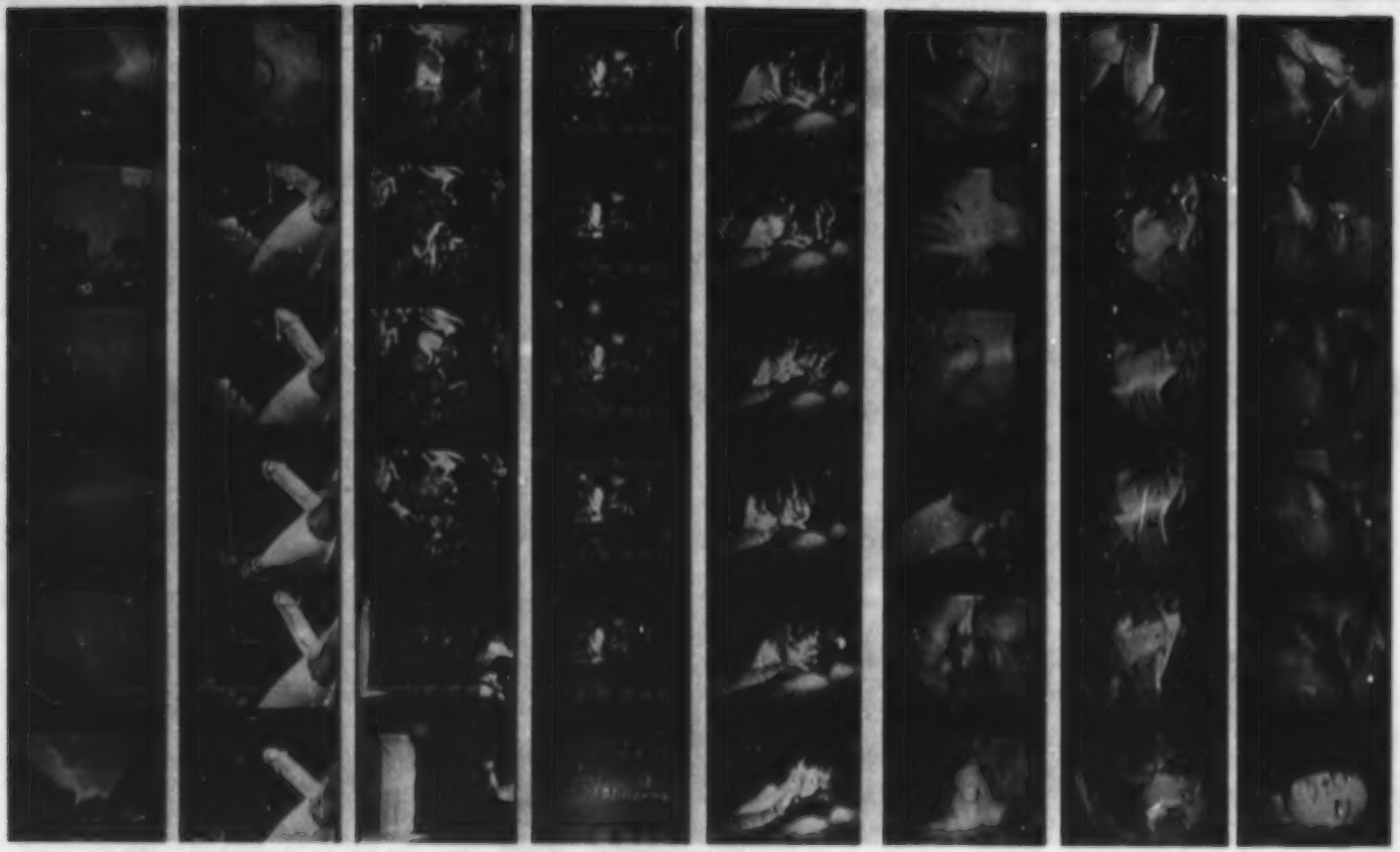




"BEHIND THE GREEN DOOR"
PART 10 OF 13 PARTS
(50:41-51:02) BLACK MALE PERFORMS SEXUAL INTERCOURSE ON GIRL VICTIM THEN MASTURBATES HER VAGINA. (51:05-52:05) FELLATIO, CUNNILINGUS, SEX ORGY CONTINUES. (52:08-52:50) CLOSEUP OF SEXUAL INTERCOURSE, PENIS EJACULATES ON FEMALE PUBIC HAIR. (52:54-56:12) FEMALE PLACES FACE BENEATH PENIS AS IT EJACULATES. SEMEN DRIPS ON FEMALE VICTIM'S MOUTH AND THROAT. SHE THEN LICKS SEMEN FROM BLACK PENIS. MALE THEN RUBS SEMEN FROM PENIS ON FEMALE'S NOSE AND MOUTH.

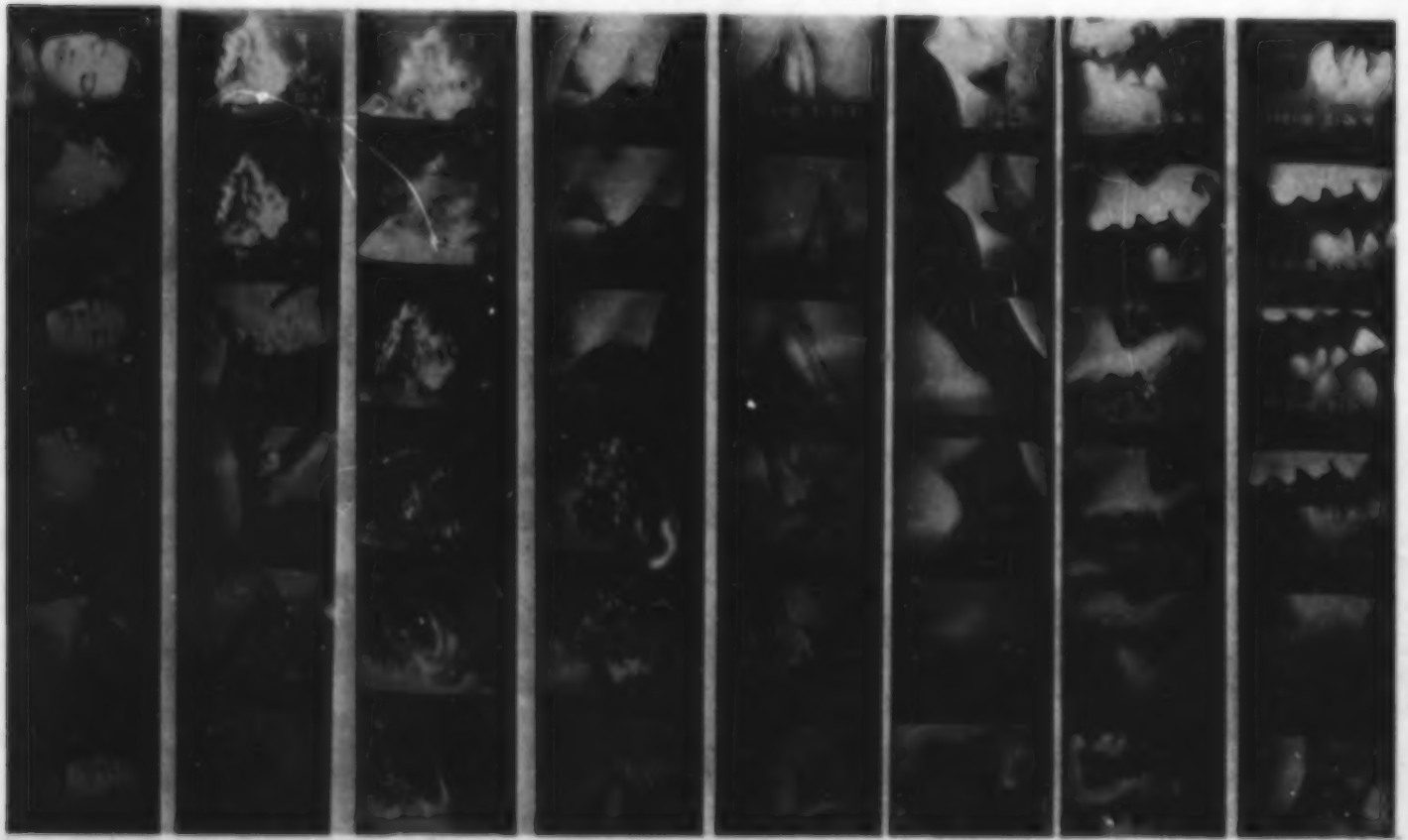
"BEHIND THE GREEN DOOR": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 24594) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO JARTECH, INC. (DATE OF ISSUANCE: APRIL 18, 1973).

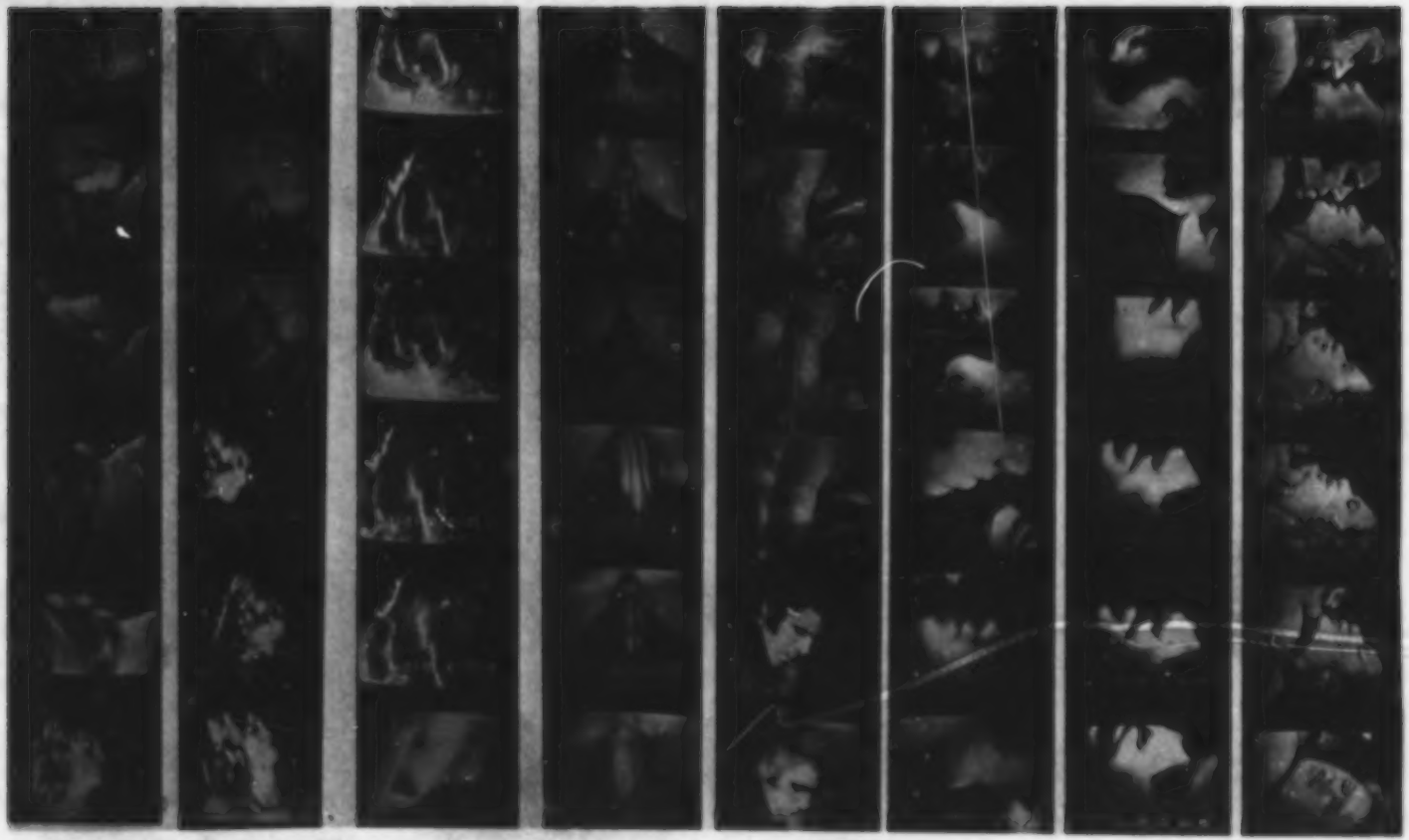




"BEHIND THE GREEN DOOR"
PART 11 OF 13 PARTS
(56:15-57:56) SPECIAL EFFECTS PHOTOGRAPHY - PENIS EJACULATES AND SEMEN POURS INTO FEMALE'S MOUTH, FEMALE PERFORMS ORAL SODOMY ON BLACK PENIS AND LICKS SEMEN OFF. (58:00-58:17) ORGY CONTINUES AND THEN VICTIM IS CARRIED OFF STAGE. (58:20-59:13) STORY RETURNS TO TWO MEN AT DINER RECOUNTING STORY. (59:16-101:22) CLOSEUP OF FEMALE PERFORMING FELLATIO. (101:25-101:46) CUNNILINGUS.

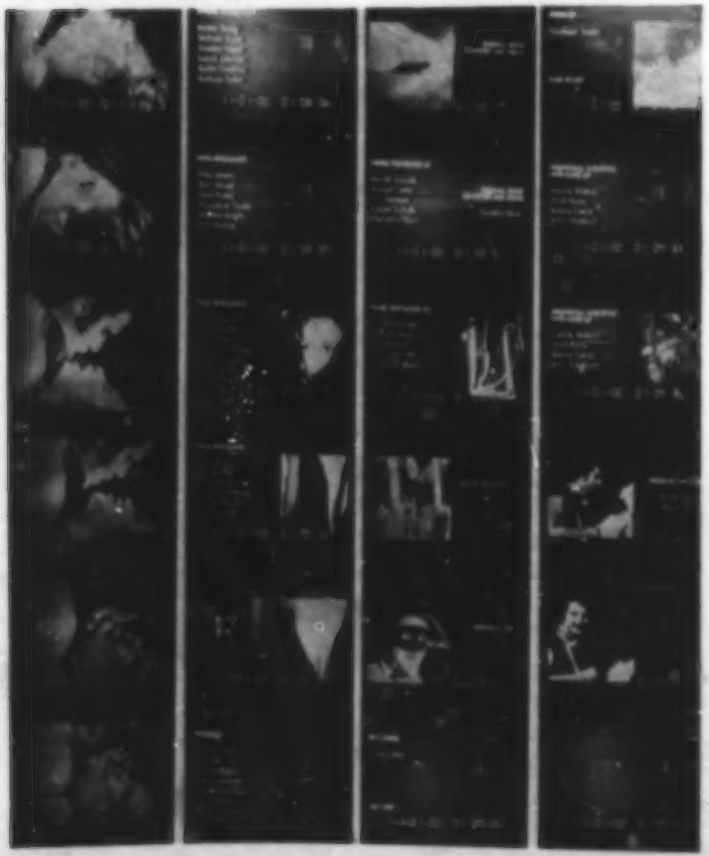
"BEHIND THE GREEN DOOR": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 24594) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO JARTECH, INC. (DATE OF ISSUANCE: APRIL 18, 1973).

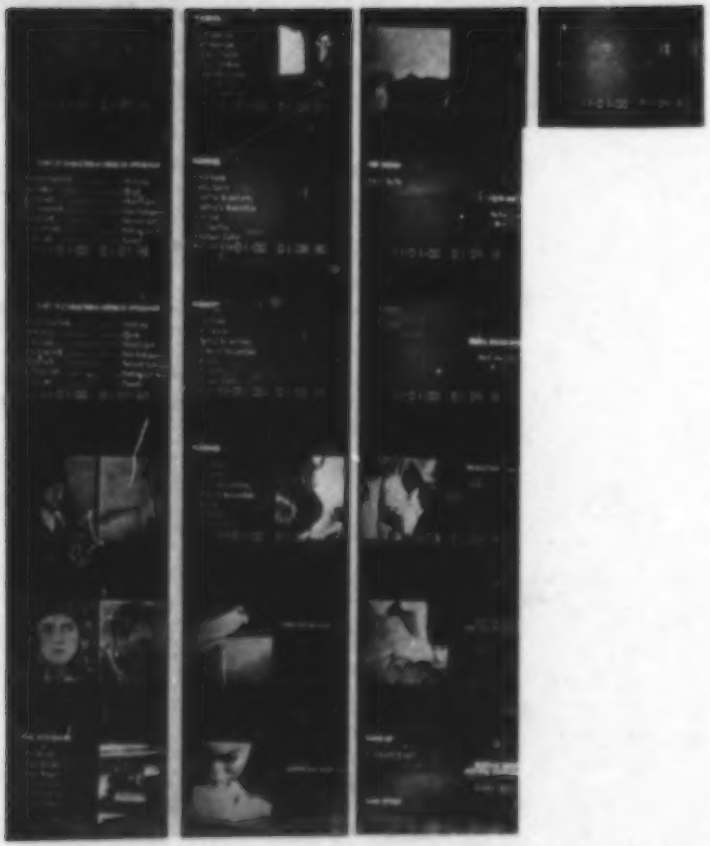




"BEHIND THE GREEN DOOR"
PART 12 OF 13 PARTS
(1:01:50-1:02:26) CLOSEUP OF MALE PERFORMING CUNNILINGUS ON VAGINA. (1:02:28-1:07:20) FEMALE MOUNTS MALE IN SEXUAL INTERCOURSE, CLOSEUP OF PENETRATION. MALE THEN MOUNTS FEMALE IN SEXUAL INTERCOURSE.

"BEHIND THE GREEN DOOR": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 24594) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO JARTECH, INC. (DATE OF ISSUANCE: APRIL 18, 1973).





"BEHIND THE GREEN DOOR"
PART 13 OF 13 PARTS
(B07:24-B09:50) MALE AND FEMALE IN SEXUAL INTERCOURSE TO END - MALE SUPERIOR.

APPENDIX D

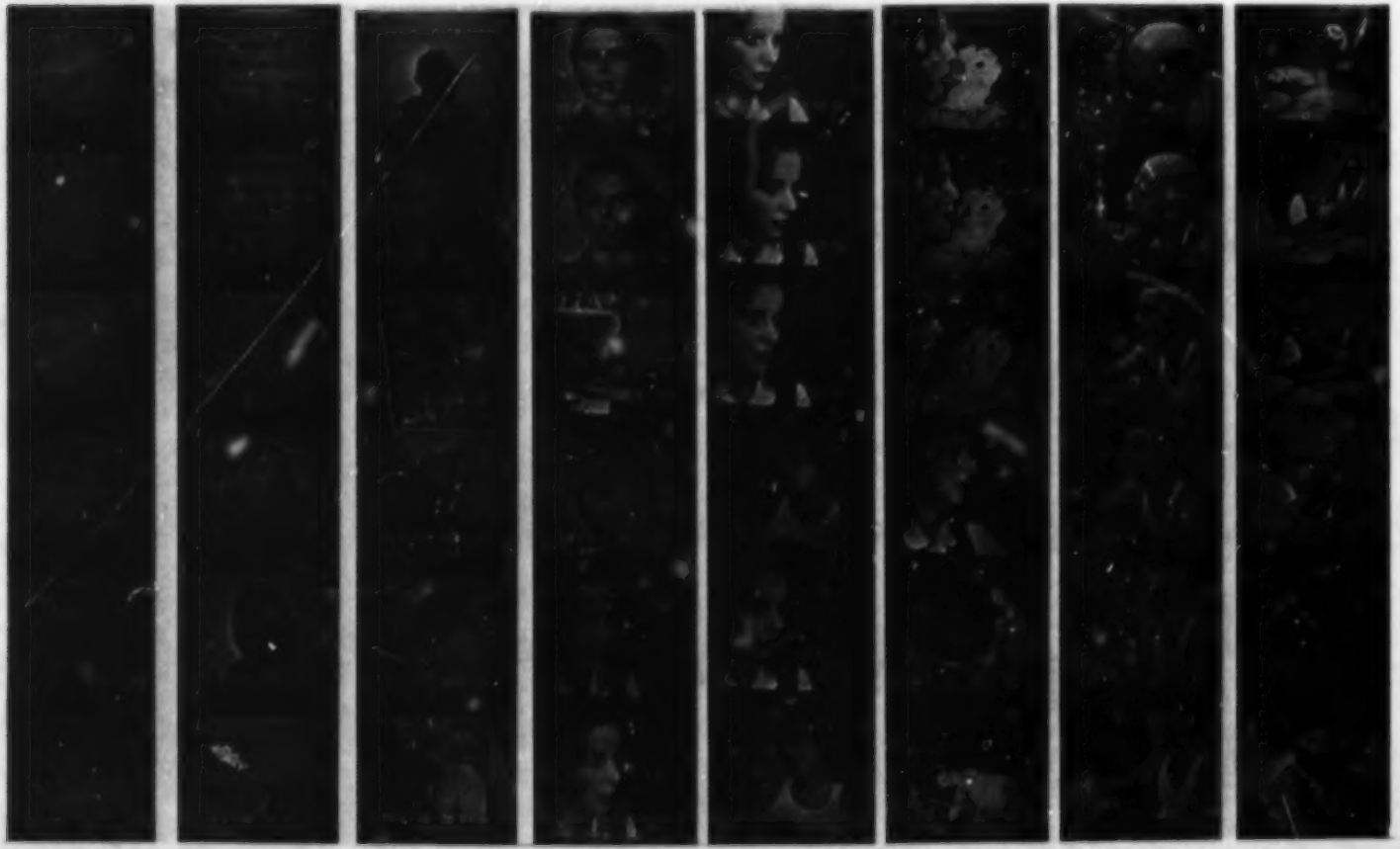
TIME-MOTION STUDY* OF THE FILM

"RESURRECTION OF EVE"

The motion picture film "Resurrection of Eve" was issued a "Certificate of Registration of a Claim to Copyright" by the Copyright Office on Nov. 10, 1973.

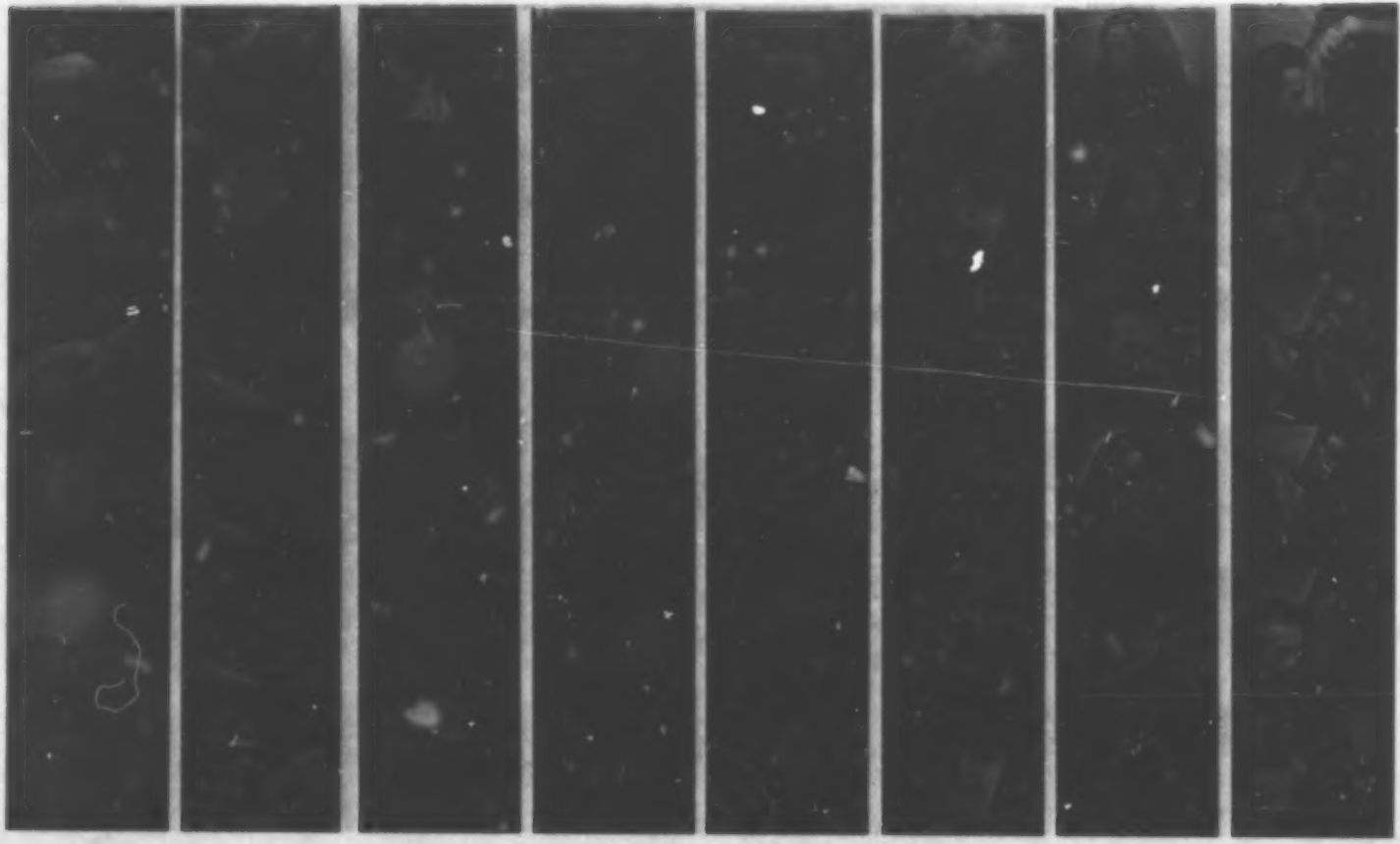
* A time-motion study is a chronological series of still photographs of a motion picture film, timed in their relative order of appearance, which, by "stopping" the movement appearing on the motion picture screen and recording the same, permits the type of conduct being portrayed thereon to be analyzed in a fair and accurate manner. Photographs have been taken every 3.6 seconds playing time.

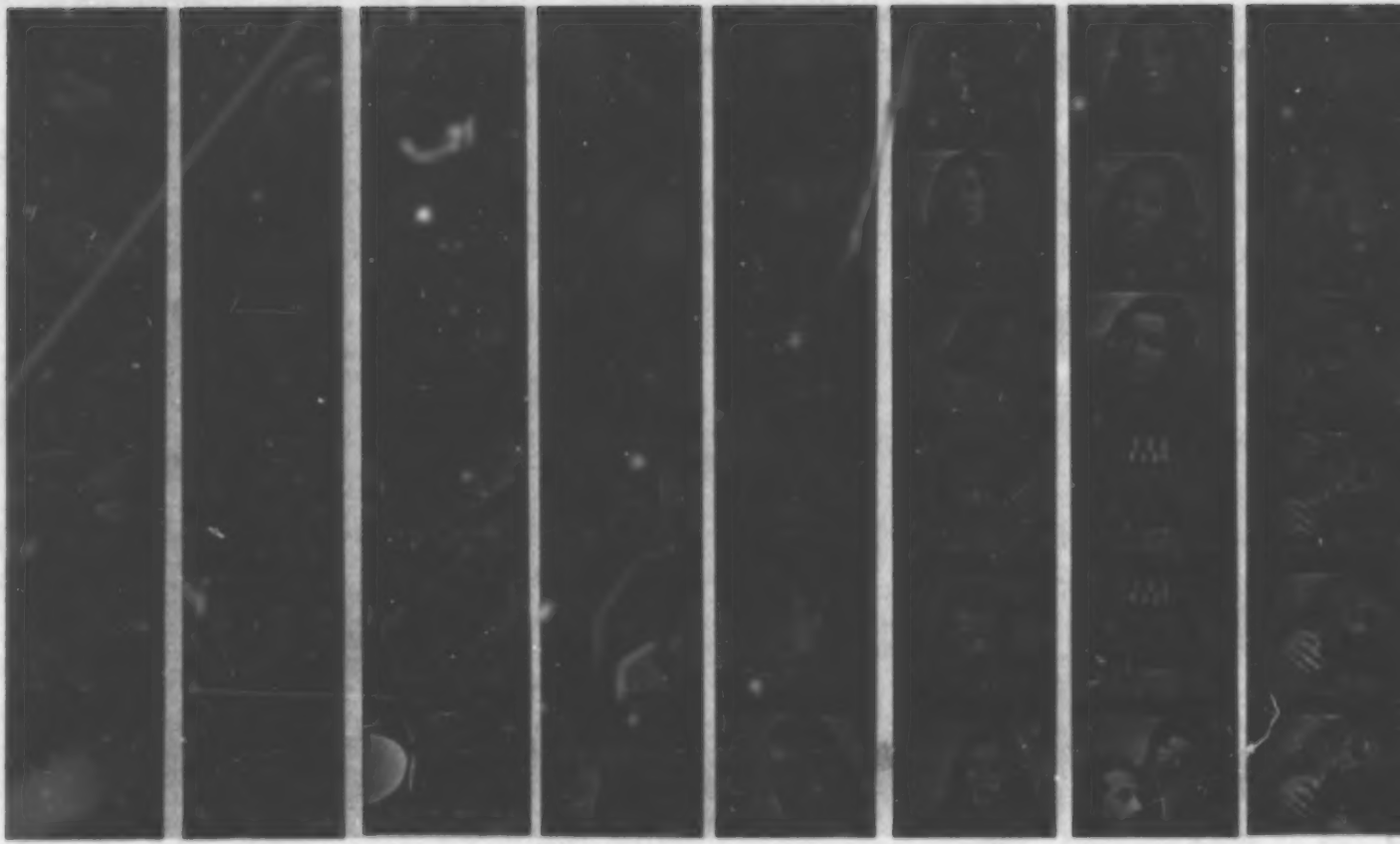
"RESURRECTION OF EVE": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 24595) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO ANATUNA, INC. (DATE OF ISSUANCE: NOV. 10, 1973).



"RESURRECTION OF EVE"
PART 1 OF 15 PARTS
(00:07-00:35) CREDIT AND TITLE. (00:39-01:00) PRODUCER'S PREFACE TO STORY. (01:09-01:35) GIRL AT SEASHORE FACES HORIZON. (01:38-01:49) SAILOR AND GIRL APPEAR. (01:53-02:13) WOMAN AT SEASHORE STILL LOOKING OUT TO SEA. (02:20-03:54) SAILOR TALKS TO YOUNG GIRL IN APARTMENT. TEACHES HER TO KISS WITH HER TONGUE BY USING RAGGEDY ANN DOLL. (03:58-04:36) SAILOR THEN KISSES GIRL. (04:40-04:57) SAILOR SHOWS GIRL ACT OF CUNNILINGUS ON RAGGEDY ANN DOLL. (05:00-05:39) SAILOR LAYS GIRL BACK ON TABLE AND PERFORMS CUNNILINGUS ON HER.

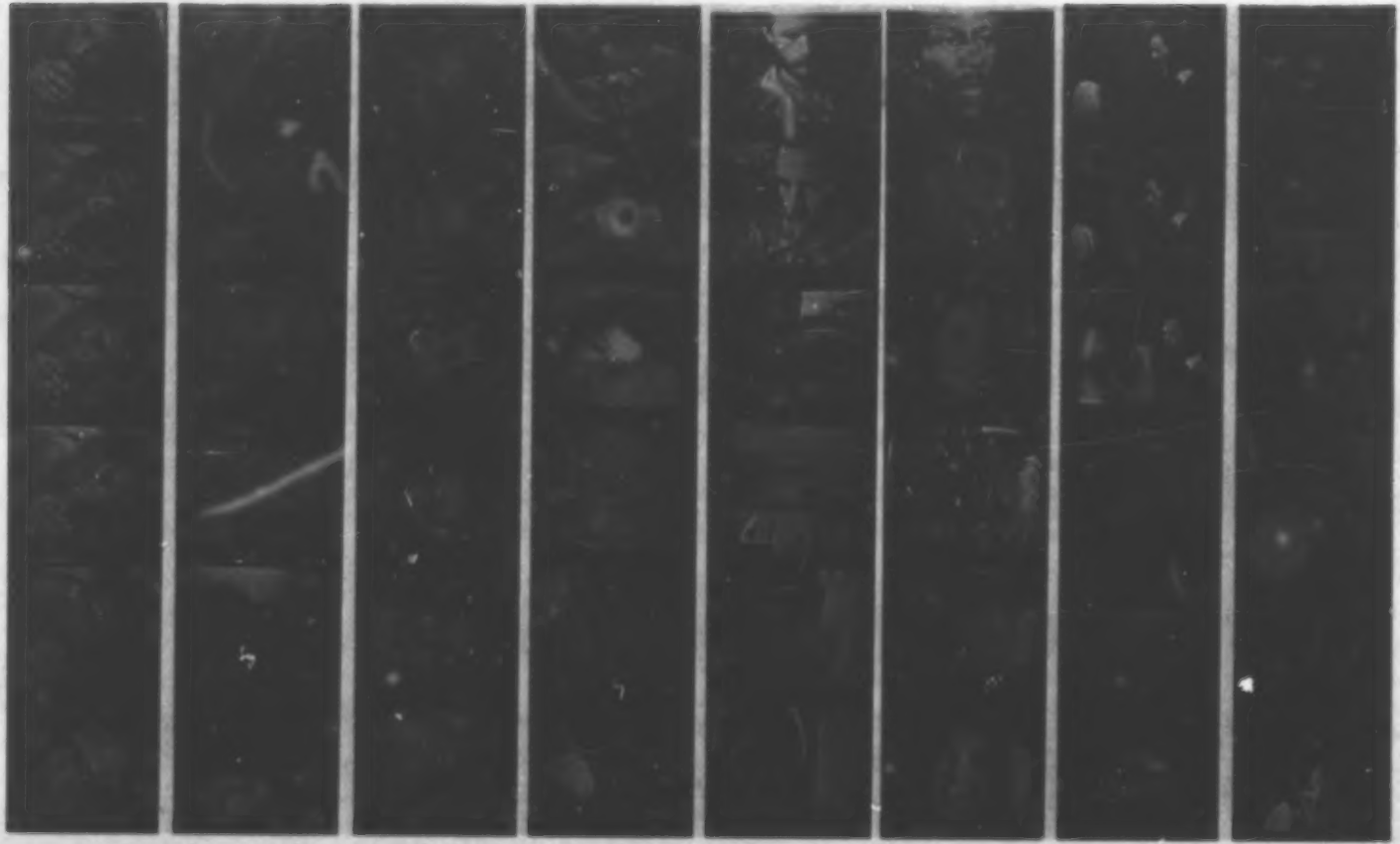
"RESURRECTION OF EVE": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 24595) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO ANATUNA, INC. (DATE OF ISSUANCE: NOV. 10, 1973).

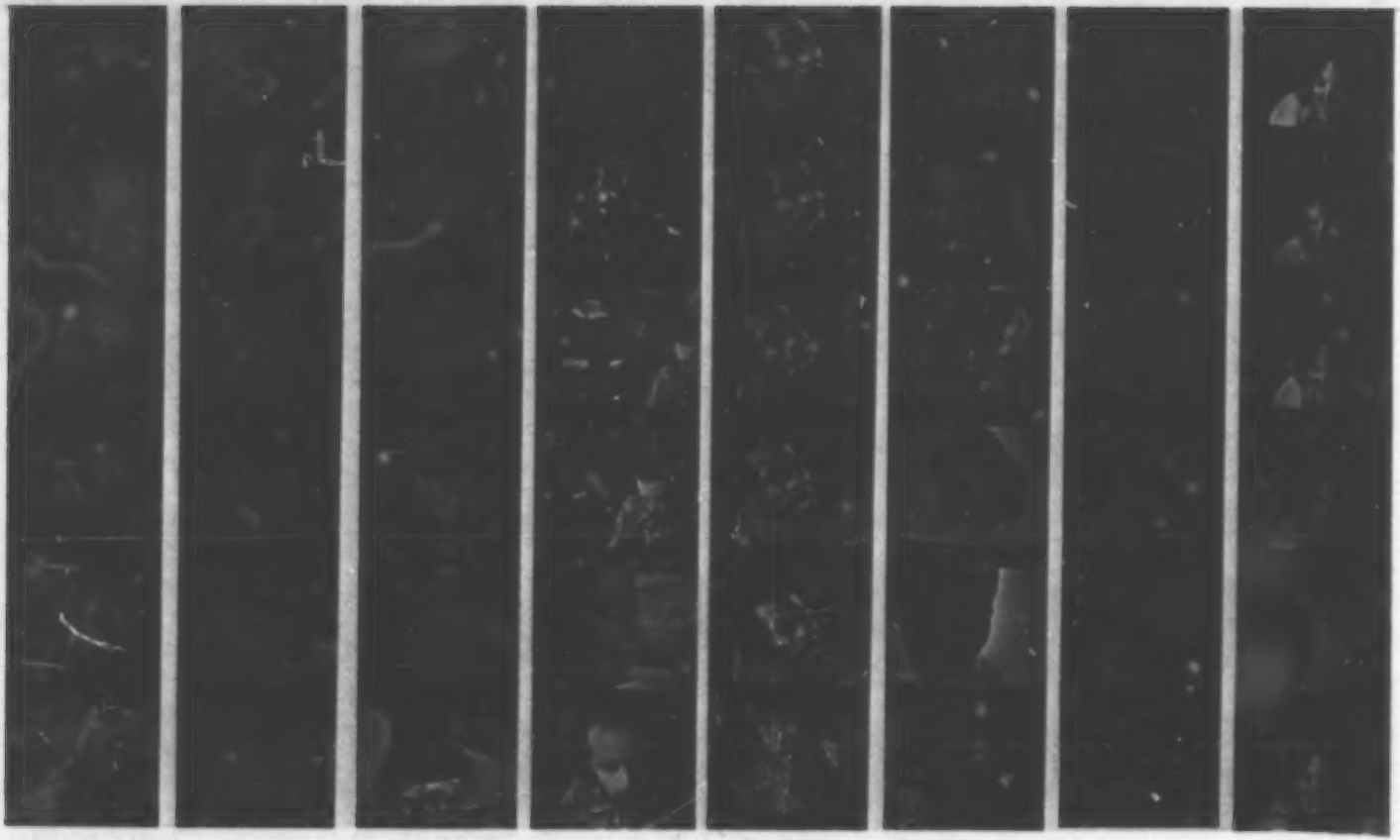




"RESURRECTION OF EVE"
PART 2 OF 15 PARTS
(05:42-06:59) CUNNILINGUS CONTINUES. (07:03-08:16) SAILOR HAS GIRL PERFORM FELLATIO ON HIM. (08:19-08:40) GIRL'S MOTHER APPEARS THROWS SAILOR OUT. (08:44-08:58) FLASHBACK TO WOMAN AT BEACH REMEMBERING. (09:01-09:08) HOSPITAL SCENE. (09:12-09:33) GYM SCENE BLACK FIGHTER AND MANAGER. MALE AND FEMALE AT TABLE. (09:36-11:00) MALE AND FEMALE CONVERSE AT TABLE. (11:03-11:14) FEMALE PERFORMS FELLATIO ON MALE.

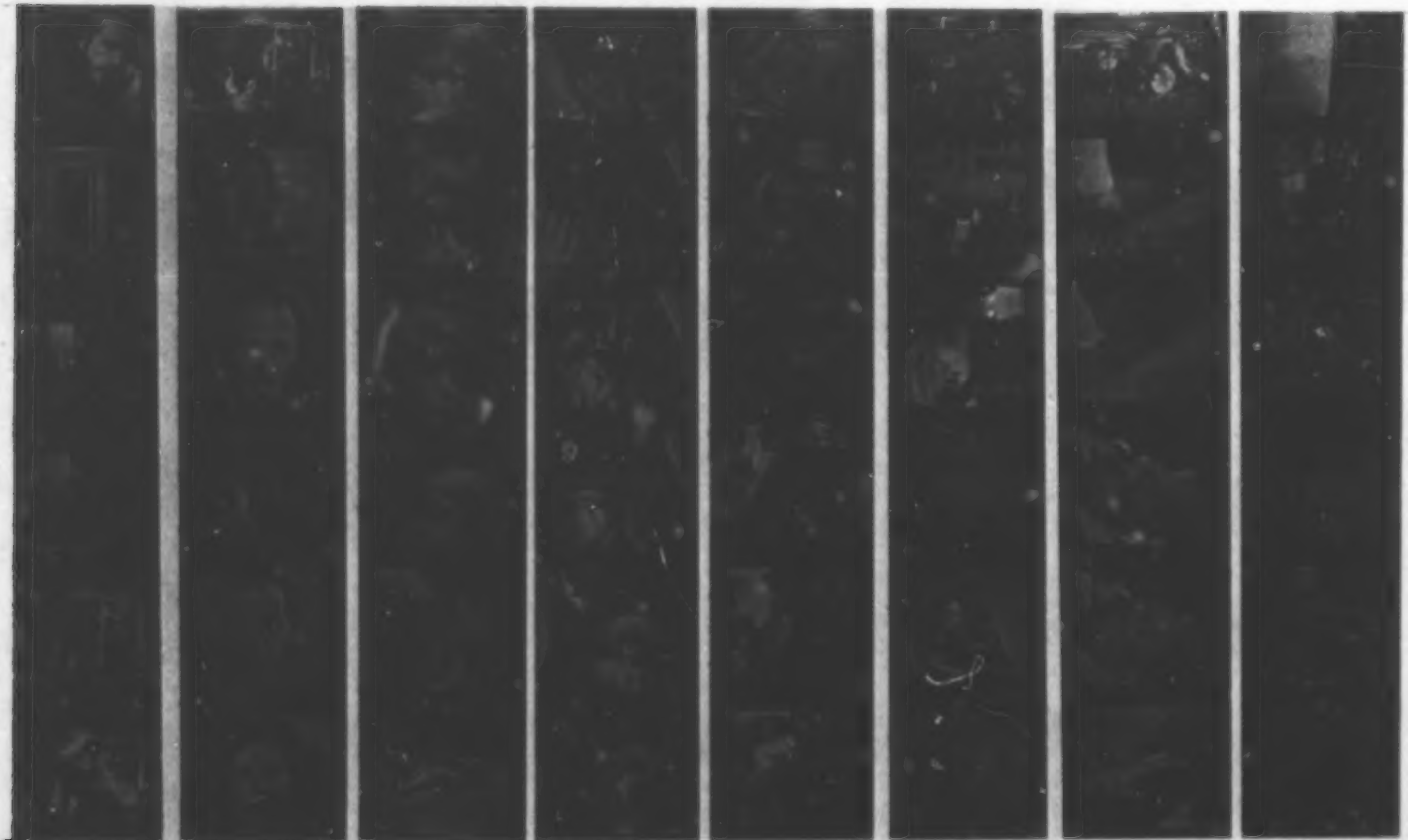
"RESURRECTION OF EVE": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 24595) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO ANATUNA, INC. (DATE OF ISSUANCE: NOV. 10, 1973).

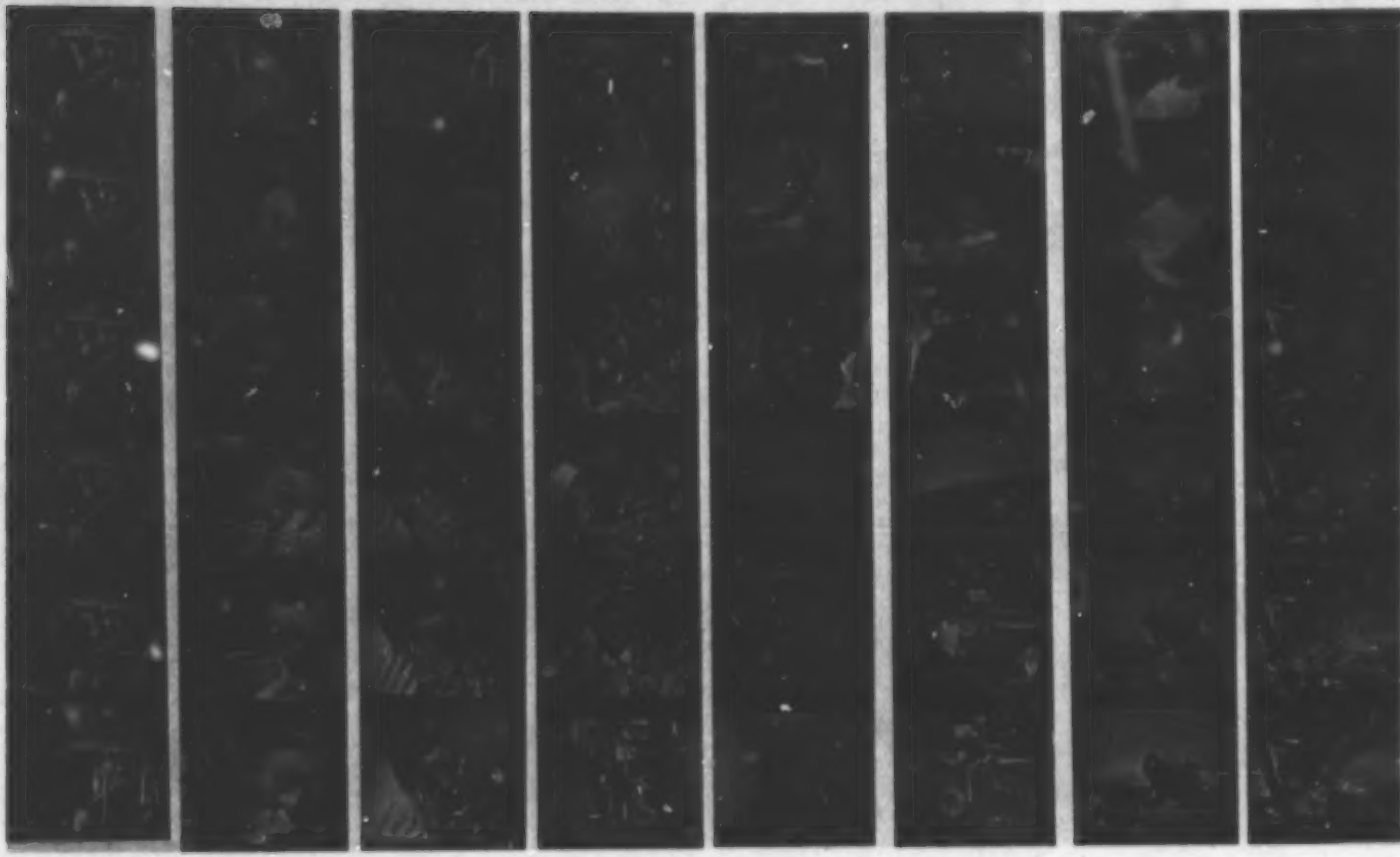




"RESURRECTION OF EVE"
PART 3 OF 15 PARTS
(11:17-12:10) FELLATIO CONTINUES. (12:13-13:33) SEXUAL INTERCOURSE, MALE SUPERIOR. (13:37-14:08) MALE PERFORMS AS DISC JOCKEY ON RADIO. (14:12-14:22) HOSPITAL SCENE; (14:26-14:47) FLASHBACK EVE TALKS TO BLACK FIGHTER (14:50-15:14) FLASHBACK, EVE TALKS TO DISC JOCKEY. (15:18-15:21) HOSPITAL FLASHBACK (15:25-15:49) DISC JOCKEY TELLS GIRLFRIEND THEY ARE THROUGH. (15:53-16:21) HOSPITAL FLASHBACK. (16:24-16:49) MALE ANNOYS FEMALE WHO IS WORKING AT RADIO.

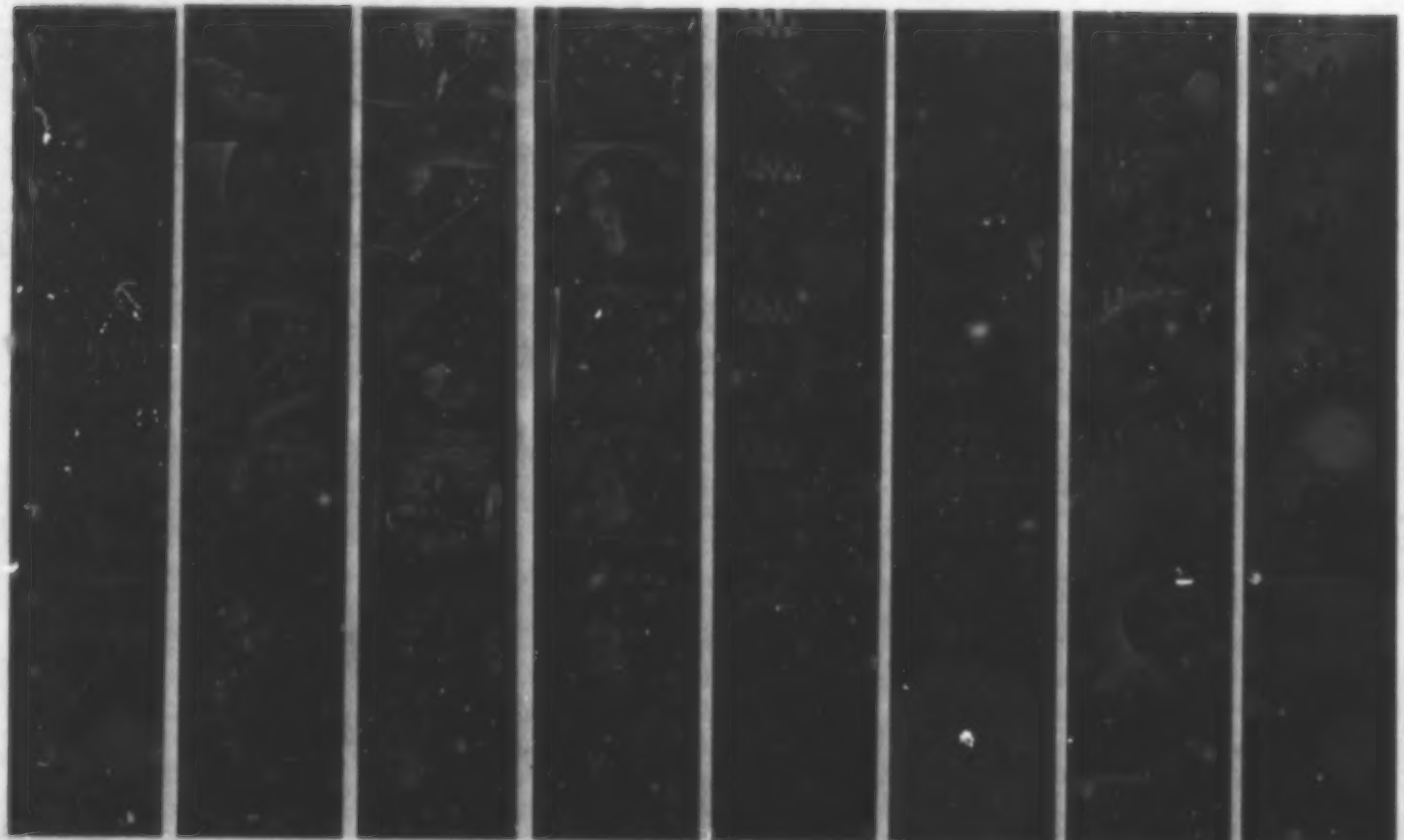
"RESURRECTION OF EVE": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 24595) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO ANATUNA, INC. (DATE OF ISSUANCE: NOV. 10, 1973).

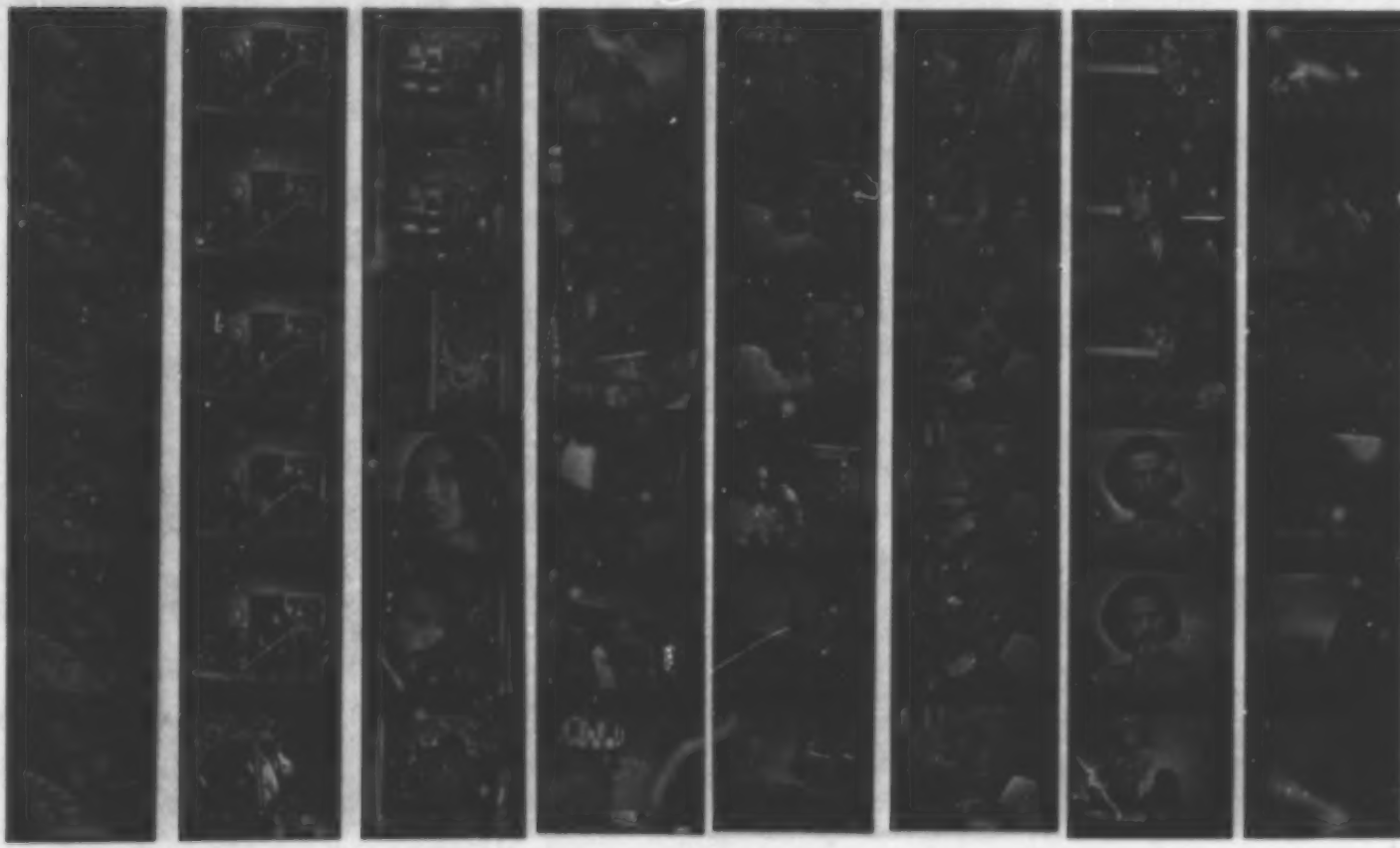




"RESURRECTION OF EVE"
PART 4 OF 15 PARTS
(16:52-17:37) DISC JOCKEY ANNOYS FEMALE WORKING AT RADIO STATION. (17:41-19:22) SEXUAL INTERCOURSE. (19:26-19:36) OUTDOOR SCENE. (19:45-19:47) SEXUAL INTERCOURSE. (19:50-19:57) EVE AND FRANK TALK. (20:00) BLACK FIGHTER SKIPS ROPE. (20:04-20:07) HOSPITAL SCENE EVE'S FACE GROTESQUE AND SCARRED. (20:11-20:18) OUTDOOR BEACH SCENE. (20:25-20:39) FRANK AND EVE TALK AND EMBRACE. (20:42-20:46) SEXUAL ACTIVITY. (20:49-21:03) OUTDOOR PARK SCENE. (21:07-21:35) CLOSEUP OF MALE FACE BETWEEN FEMALE'S LEGS PERFORMING CUNNILINGUS. (21:38-21:42) EVE IN HOSPITAL WITH NURSE. (21:45-21:49) GYM SCENE FIGHTER WORKING OUT. (21:59-22:24) SEXUAL INTERCOURSE MALE SUPERIOR.

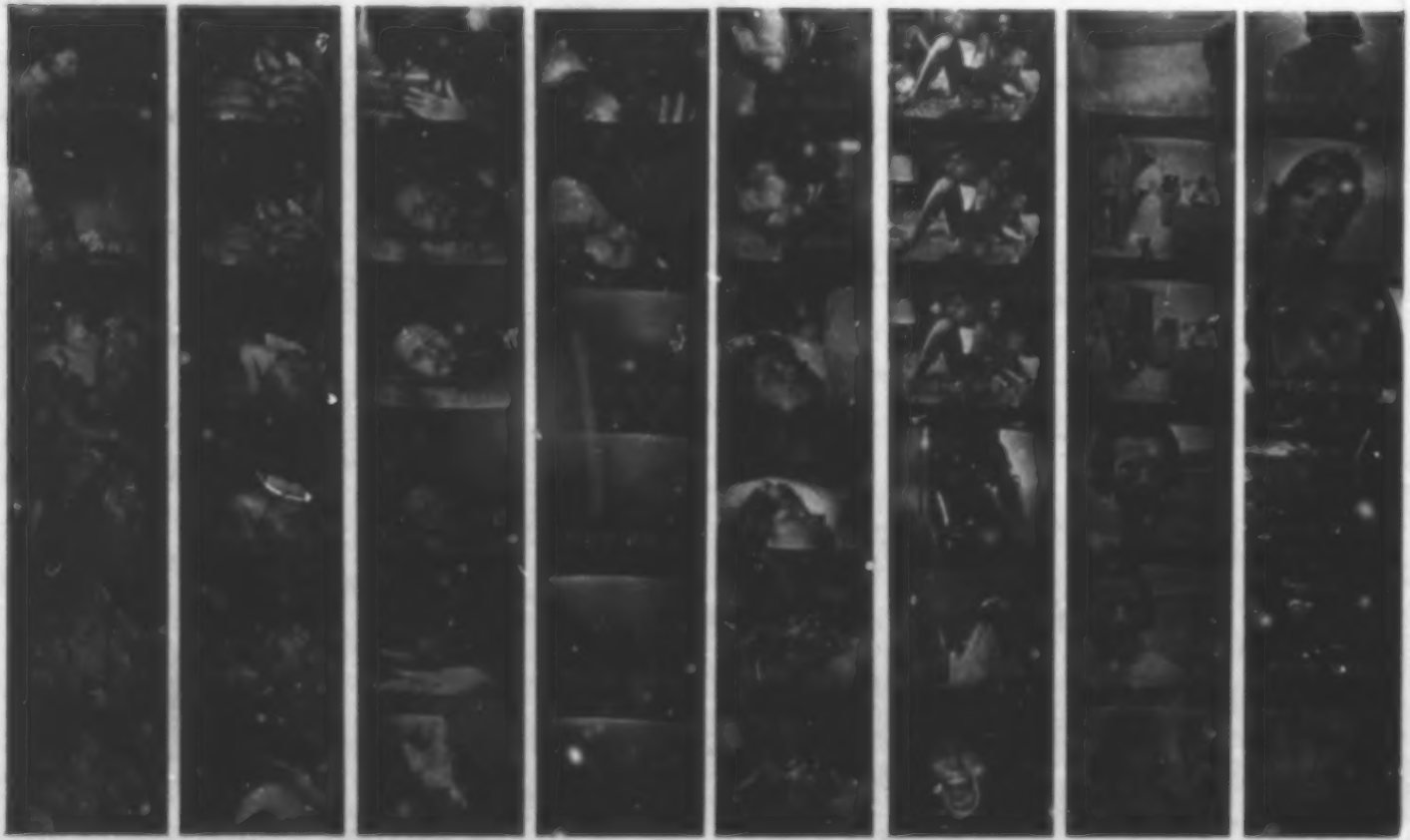
"RESURRECTION OF EVE": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYFIGHT (REG. NO. M.P. 24595) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO ANATUNA, INC. (DATE OF ISSUANCE: NOV. 10, 1973).





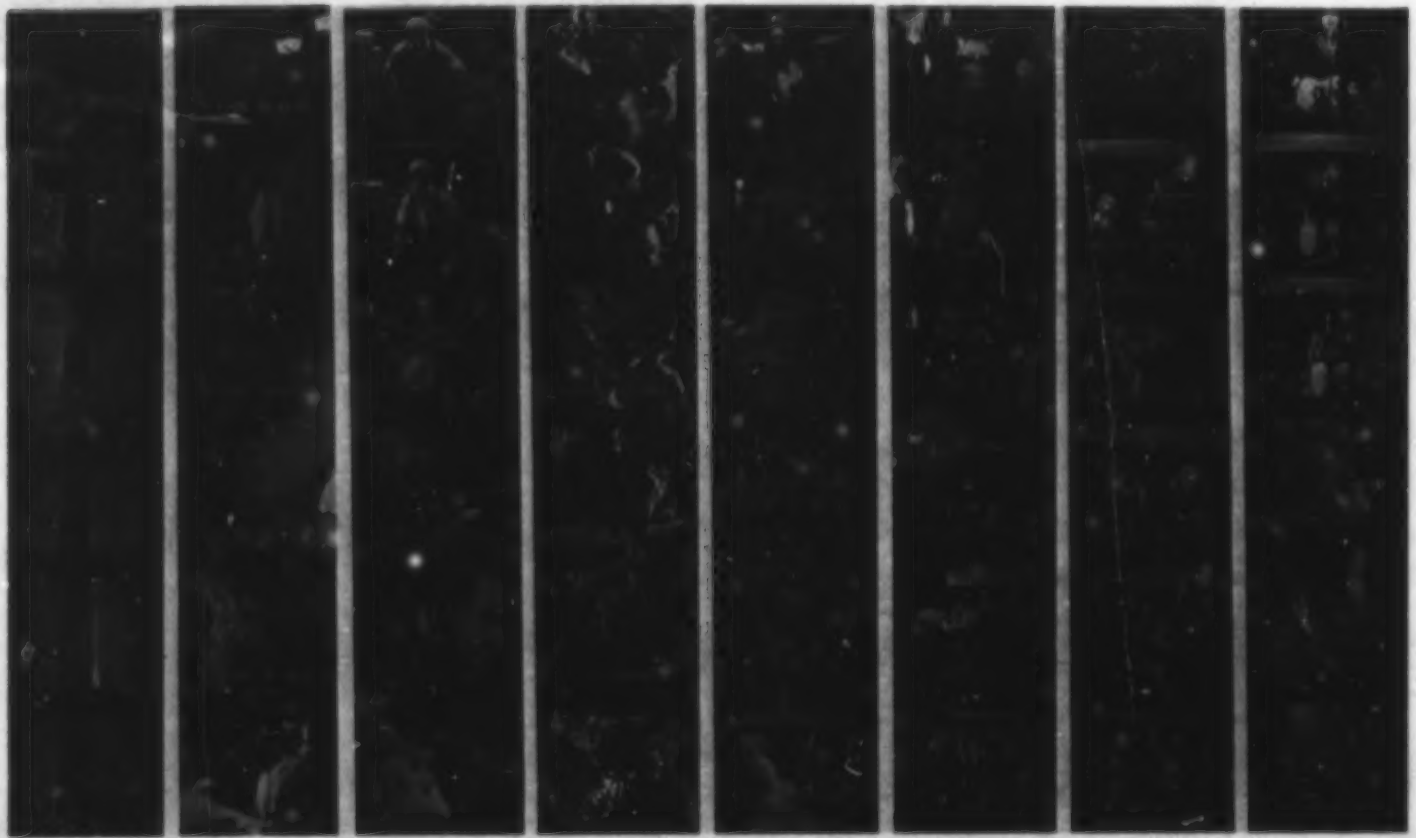
"RESURRECTION OF EVE"
PART 5 OF 15 PARTS
(22:27-23:09) SEXUAL INTERCOURSE. (23:12) EVE SCARRED. (23:16-23:58) FRANK RETURNS TO RADIO STATION. (24:00-24:57) FRANK QUARRELS WITH EX-GIRLFRIEND AT STORE COUNTER. (25:01) FIGHTER TRAINS. (25:08-26:38) FRANK WAITS AT APARTMENT FOR EVE. (26:42-27:31) EVE TELLS HIM SHE SAW BOXING MATCH WITH BLACK FIGHTER. (27:34-27:59) IN FANTASY FRANK BOXES BLACK FIGHTER.

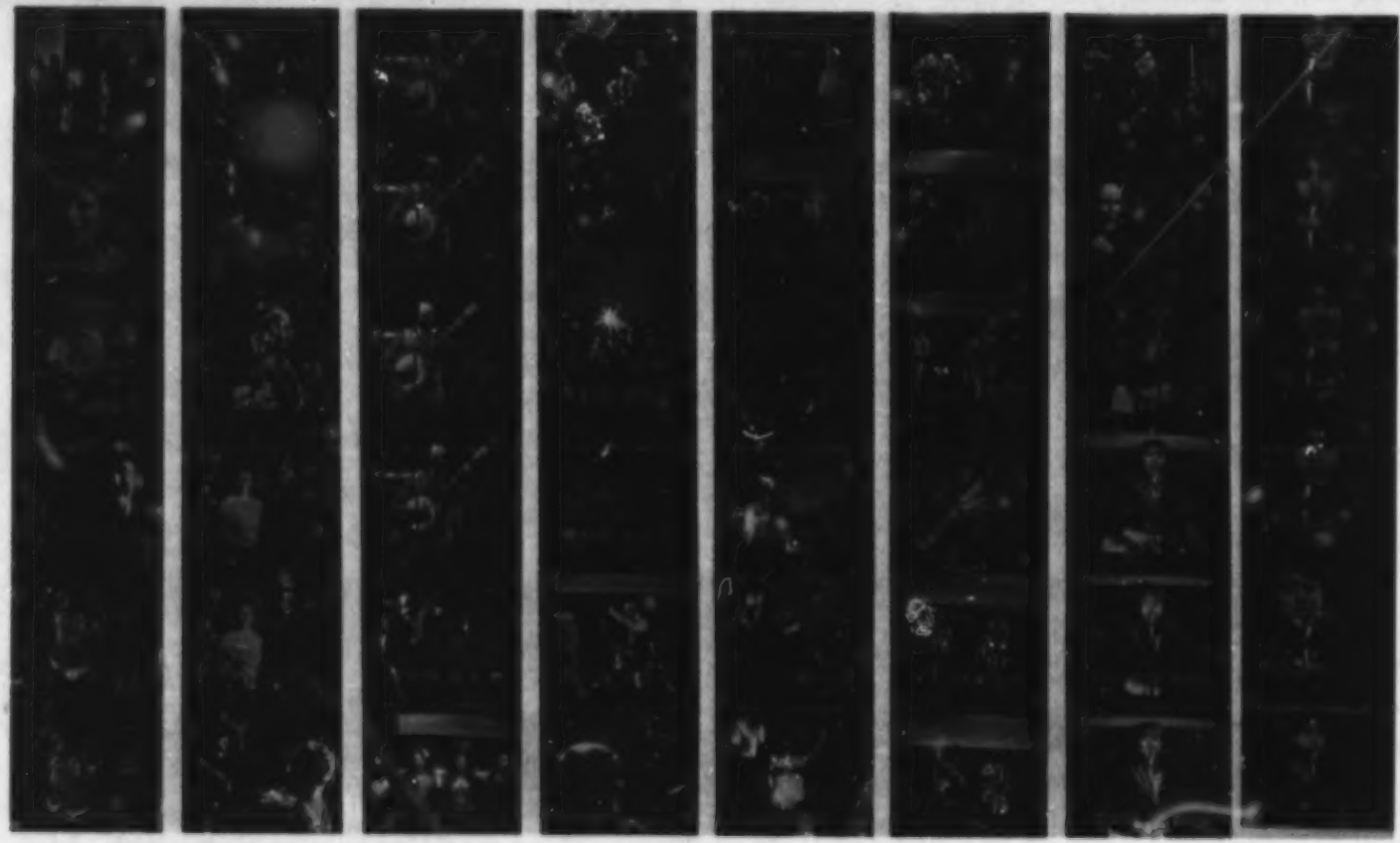
"RESURRECTION OF EVE": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 24595) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO ANATUNA, INC. (DATE OF ISSUANCE: NOV. 10, 1973).



"RESURRECTION OF EVE"
PART 6 OF 15 PARTS
(28:02-28:06) SHADOW BOXING. (28:09-28:27) FRANK AND EVE TALK. (28:30-28:41) FRANK AND EVE HAVE SEXUAL INTERCOURSE. (28:44-29:57) EVE PERFORMS FELLATIO ON FRANK. (30:04-30:29) SEXUAL INTERCOURSE WITH BLACK FIGHTER (30:32-30:53) SEXUAL INTERCOURSE WITH FRANK, (30:57-31:46) EVE IS NOT SATISFIED. (31:49) EVE SCREAMS. (31:53-32:21) FLASHBACK TO EVE IN HOSPITAL. (32:23-33:13) FRANK VISITS EVE IN HOSPITAL RECOVERING FROM PLASTIC SURGERY. (33:13-33:34) CLOSEUP OF EVE RECOUPERATING.

"RESURRECTION OF EVE": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 24595) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO ANATUNA, INC. (DATE OF ISSUANCE: NOV. 10, 1973).



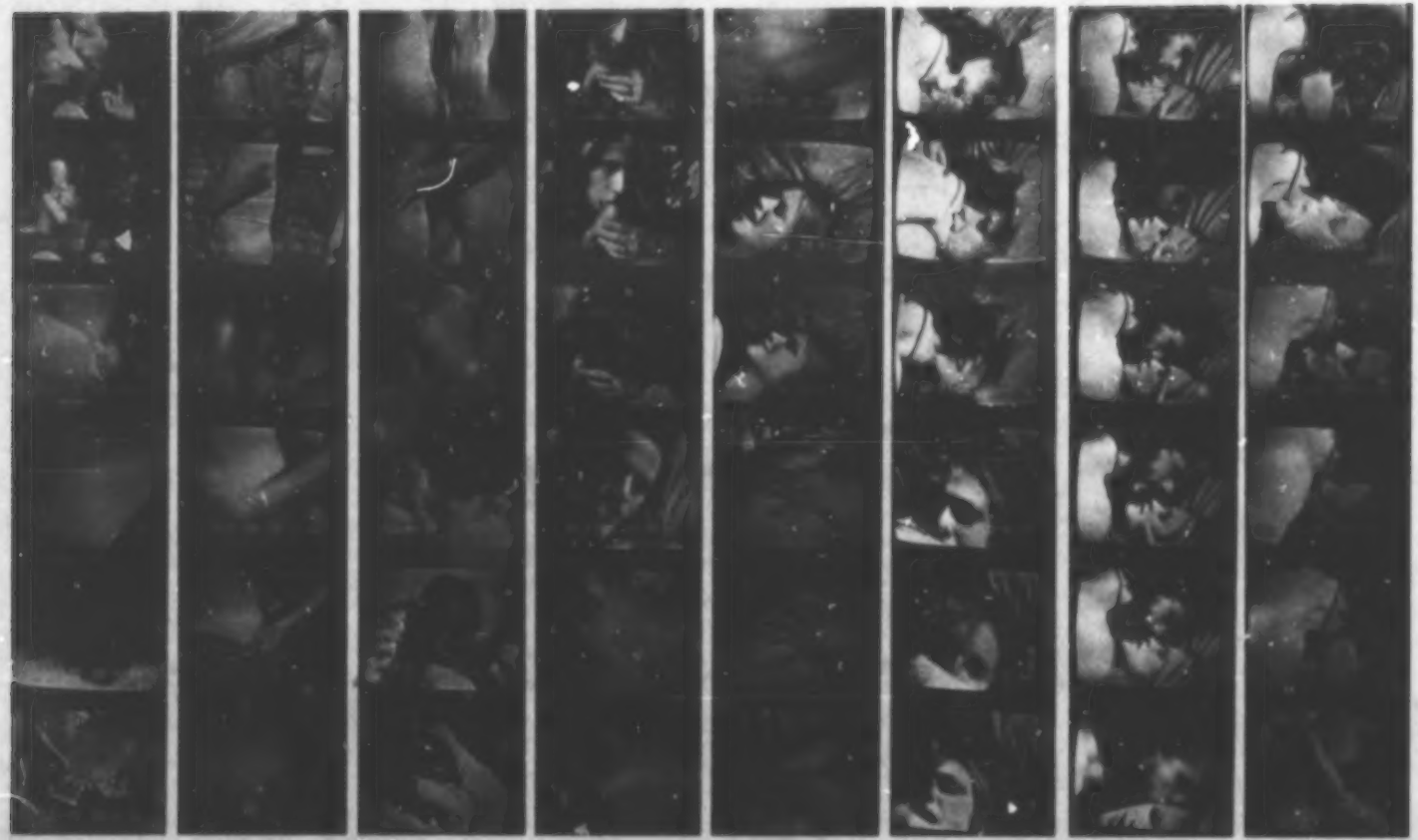


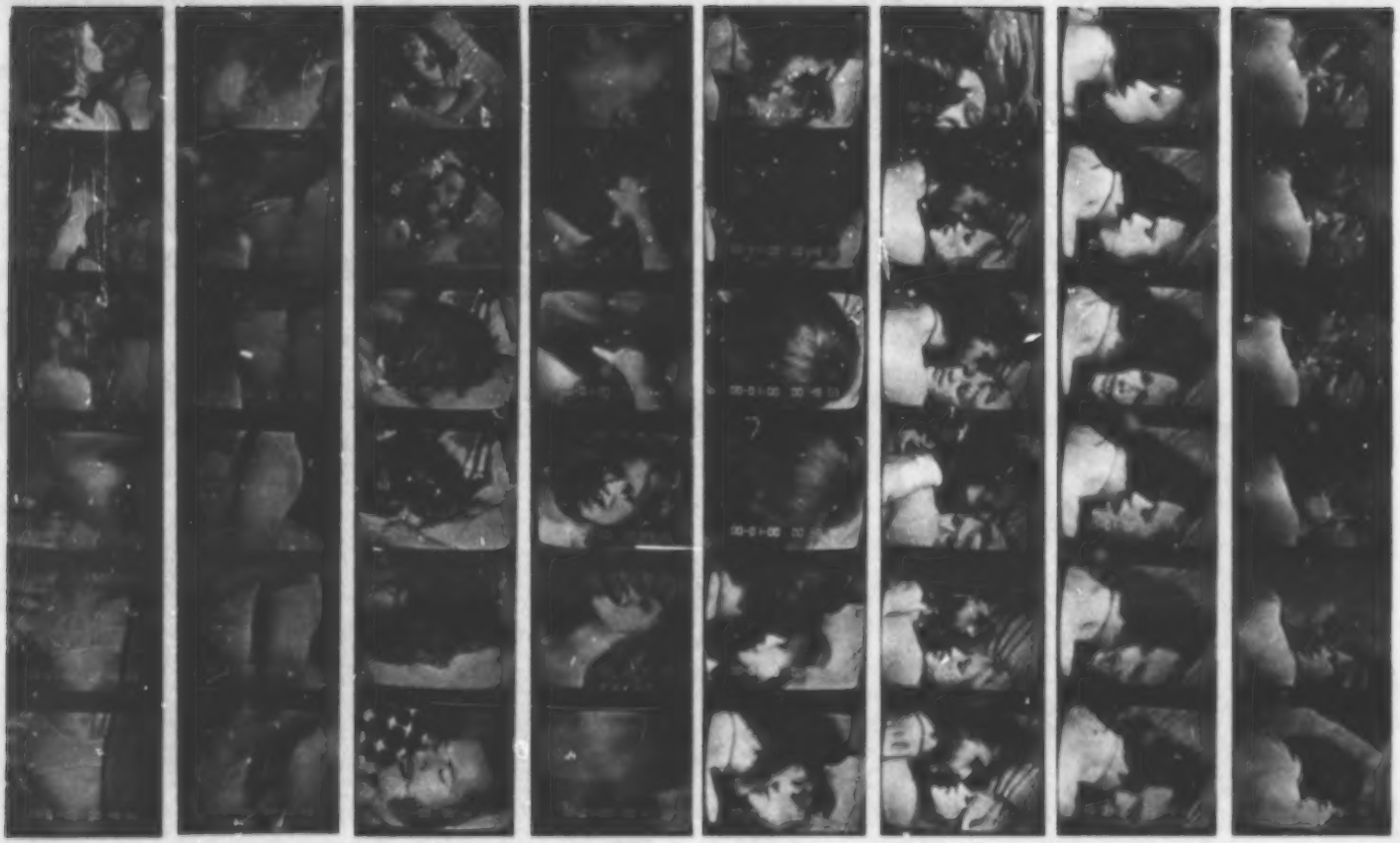
"RESURRECTION OF EVE"
PART 7 OF 15 PARTS
(33:37-39:09) FRANK AND EVE GET MARRIED - MUSICAL GROUP AND DANCERS PERFORM AT CEREMONY. BLACK MUSICAL GROUP PERFORMS FOLLOWED BY MALE SINGER.

"RESURRECTION OF EVE": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 24595) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO ANATUNA, INC. (DATE OF ISSUANCE: NOV. 10, 1973).

"RESURRECTION OF EVE"
PART 8 OF 15 PARTS
(39:13-39:37) WEDDING CELEBRATION CONTINUES. (39:40-40:43) FRANK PERFORMS AS DISC JOCKEY. (40:47-41:08) FRANK AT POOLSIDE. (41:11-42:35) FRANK AND EVE EMBRACE AND KISS IN BED. (42:39-42:53) EVE VACUUMS APARTMENT. (42:56-44:44) FRANK AND EVE EMBRACE. THEY STRIP AND KISS.

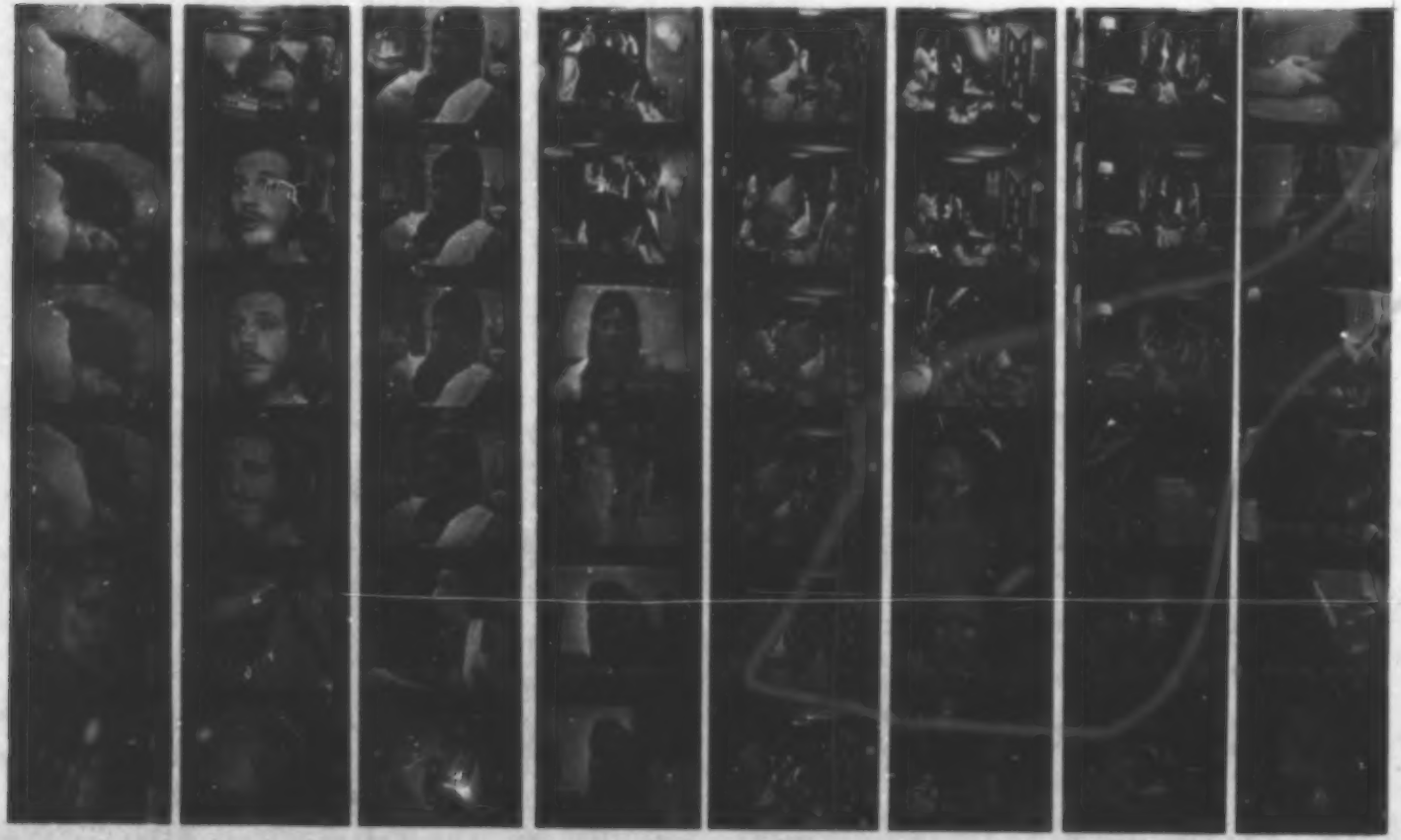
"RESURRECTION OF EVE": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 24595) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO ANATUNA, INC. (DATE OF ISSUANCE: NOV. 10, 1973).





"RESURRECTION OF EVE"
PART 9 OF 15 PARTS
(44:48-46:22) FRANK AND EVE CONTINUE TO STRIP. (46:26-47:18) IN BED. EVE PERFORMS FELLATIO ON FRANK.
(47:25-50:20) FRANK MOUNTS EVE IN SEXUAL INTERCOURSE.

"RESURRECTION OF EVE": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 24595) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO ANATUNA, INC. (DATE OF ISSUANCE: NOV. 10, 1973).



"RESURRECTION OF EVE"
PART 10 OF 15 PARTS
(50:23-50:33) INTERCOURSE CONTINUES. (50:37-51:15) EVE IS PERSUADED TO JOIN IN GROUP SEX. (51:18-55:55) MALES AND FEMALES GATHER FOR SEXUAL ACTIVITY - MEMBERS ARE PARTIALLY DRESSED - THEN DISROBE AND ENGAGE IN VARIOUS SEXUAL ACTS IN SEXUAL ORGY.

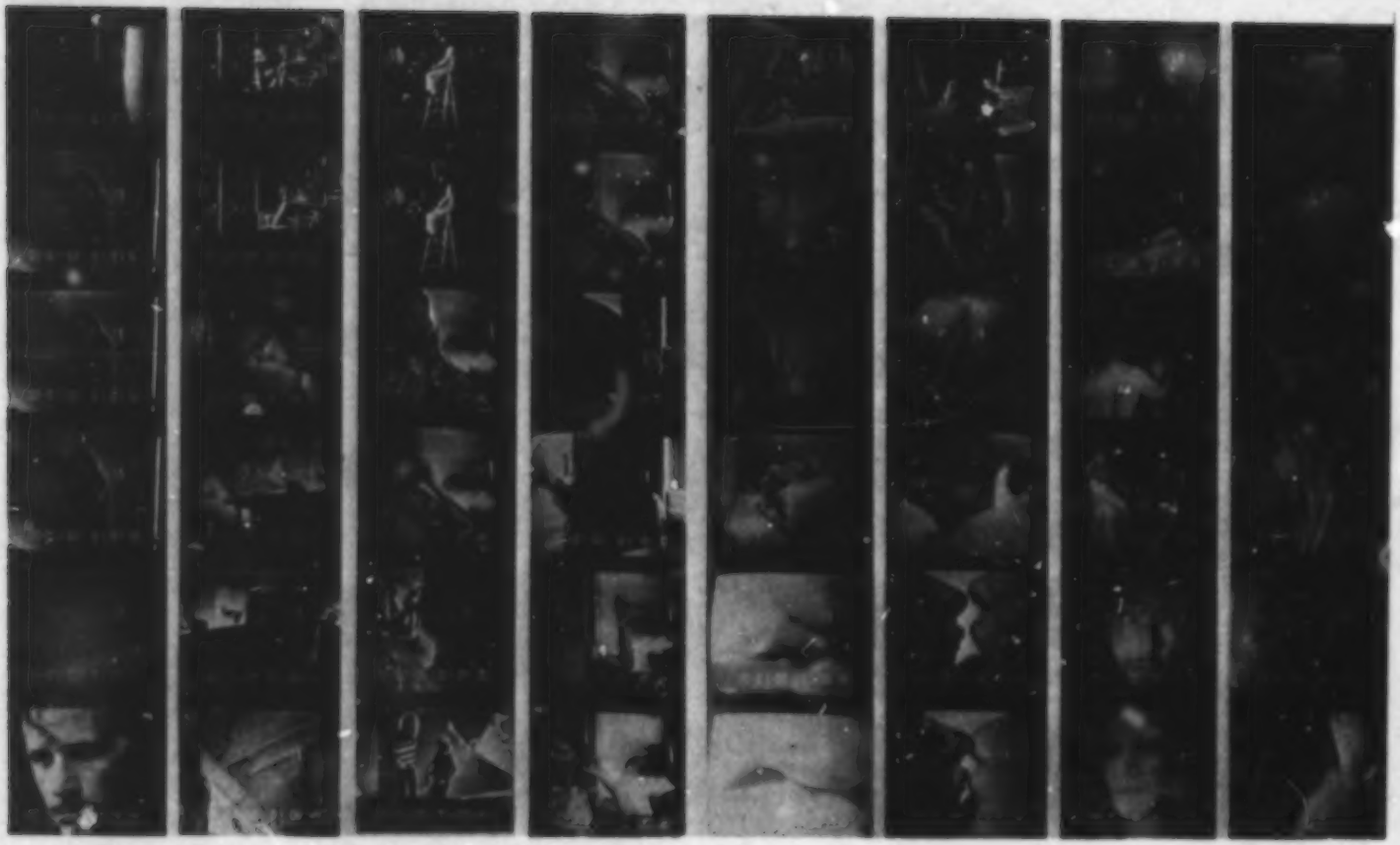
"RESURRECTION OF EVE": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 24595) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO ANATUNA, INC. (DATE OF ISSUANCE: NOV. 10, 1973).

"RESURRECTION OF EVE"
PART 11 OF 15 PARTS
(55:59-56:33) SEX ORGY CONTINUES. FELLATIO BY FEMALE ON MALE. MASTURBATION, CUNNILINGUS, SEXUAL INTERCOURSE. (57:01) EVE SEES FRANK HAVE INTERCOURSE WITH ANOTHER FEMALE. (57:36-59:31) EVE AND FRANK QUARREL. EVE APOLOGIZES. (59:35-61:30) EVEN AGAIN JOINS IN SEX ORGY.

"RESURRECTION OF EVE": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 24595) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO AMATUNA, INC. (DATE OF ISSUANCE: NOV. 10, 1973).

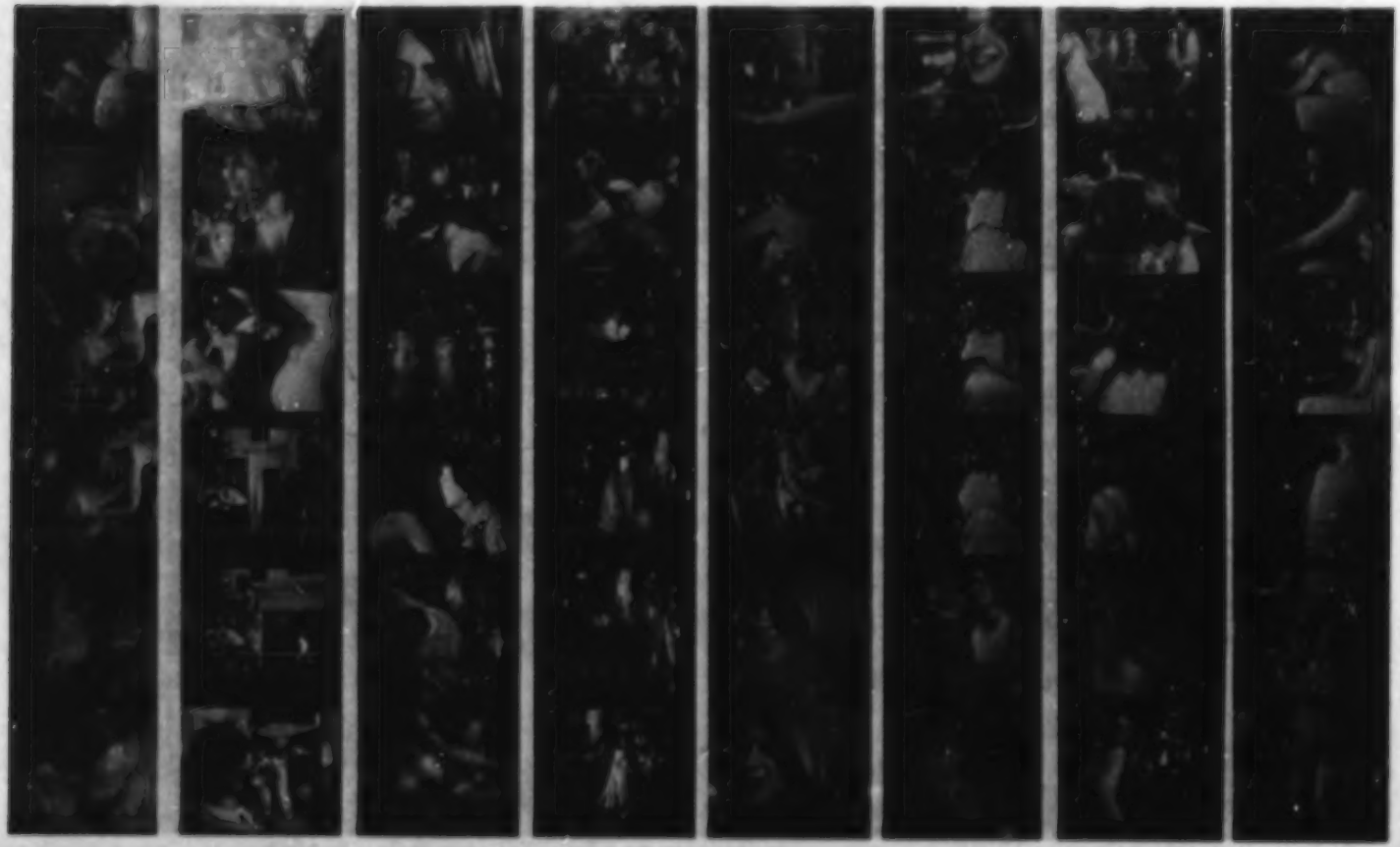
"RESURRECTION OF EVE"
PART 12 OF 15 PARTS
(61:34-61:35) SEX ORGY CONTINUES - FELLATIO SEXUAL INTERCOURSE, LESBIANISM, MASTURBATION, SEXUAL INTERCOURSE. (62:38-63:41) EVE IN CAR. FRANK TELLS EVE TO GET RID OF HER HANGUPS. (63:45-67:21) SCENES ALTERNATE BETWEEN PARTY SCENES AND EVE PERFORMING FELLATIO AND EVE AT HOME.

"RESURRECTION OF EVE": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 24595) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO ANATUNA, INC. (DATE OF ISSUANCE: NOV. 10, 1973).



"RESURRECTION OF EVE"
PART 13 OF 15 PARTS
(67:25-68:05) EVE COLLAPSES ON BED. FRANK IS DISGUSTED. (68:09-70:16) FRANK GOES TO STATION TO WORK. EVE ACCEPTS PHONE INVITATION TO GROUP SEX PARTY. (70:21-73:14) SEX PARTY - FEMALE PERFORMING FELLATIO. CUNNILINGUS PERFORMED ON EVE. LESBIANISM. SEXUAL INTERCOURSE.

"RESURRECTION OF EVE": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 24595) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO ANATUNA, INC. (DATE OF ISSUANCE: NOV. 10, 1973).



"RESURRECTION OF EVE"
PART 14 OF 15 PARTS
(73:17-73:28) GROUP SEX ORGY. (73:32-73:39) PENIS EJACULATES IN MOUTH OF FEMALE. (73:43-73:59) GROUP SEX CLOSEUP OF SEMEN EJACULATING FROM MALE PENIS. (74:02-75:00) PARTY SCENE. (75:04-76:25) SEX ORGY PARTY. FELLATIO. SEXUAL INTERCOURSE. (76:28-79:06) EVE IS DISROBED BY BLACK FIGHTER. HE FONDLES HER BREASTS. EVE MOUNTS FIGHTER IN SEXUAL INTERCOURSE WHILE HE IS SEATED.

"RESURRECTION OF EVE": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 24595) WAS ISSUED
THE REGISTER OF COPYRIGHTS TO ANATUNA, INC. (DATE OF ISSUANCE: NOV. 10, 1973).

"RESURRECTION OF EVE"
PART 15 OF 15 PARTS
(79:10-82:06) SEXUAL INTERCOURSE, FELLATIO. SEXUAL ORGY. (82:10-84:15) CREDITS.

APPENDIX D

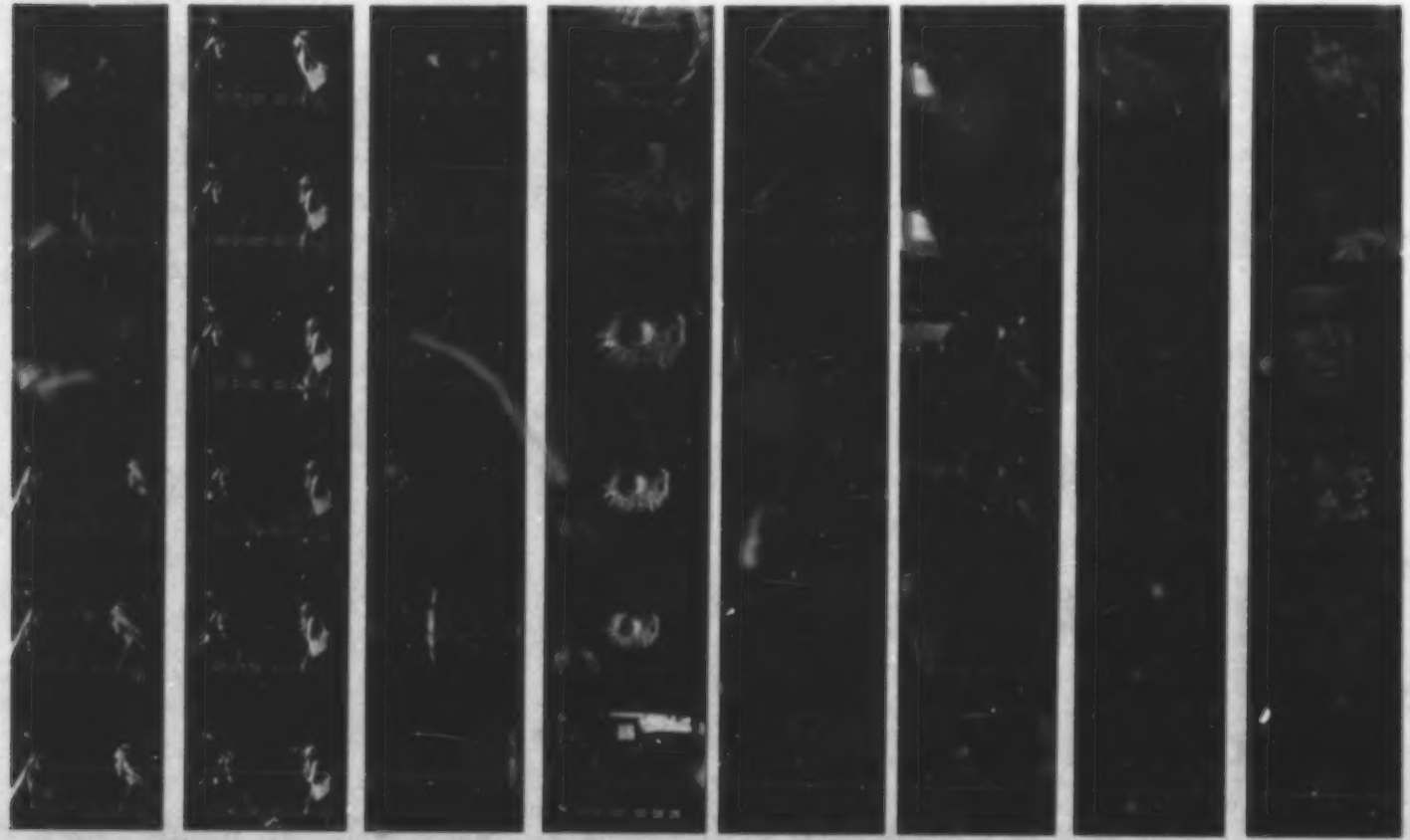
TIME-MOTION STUDY* OF THE FILM

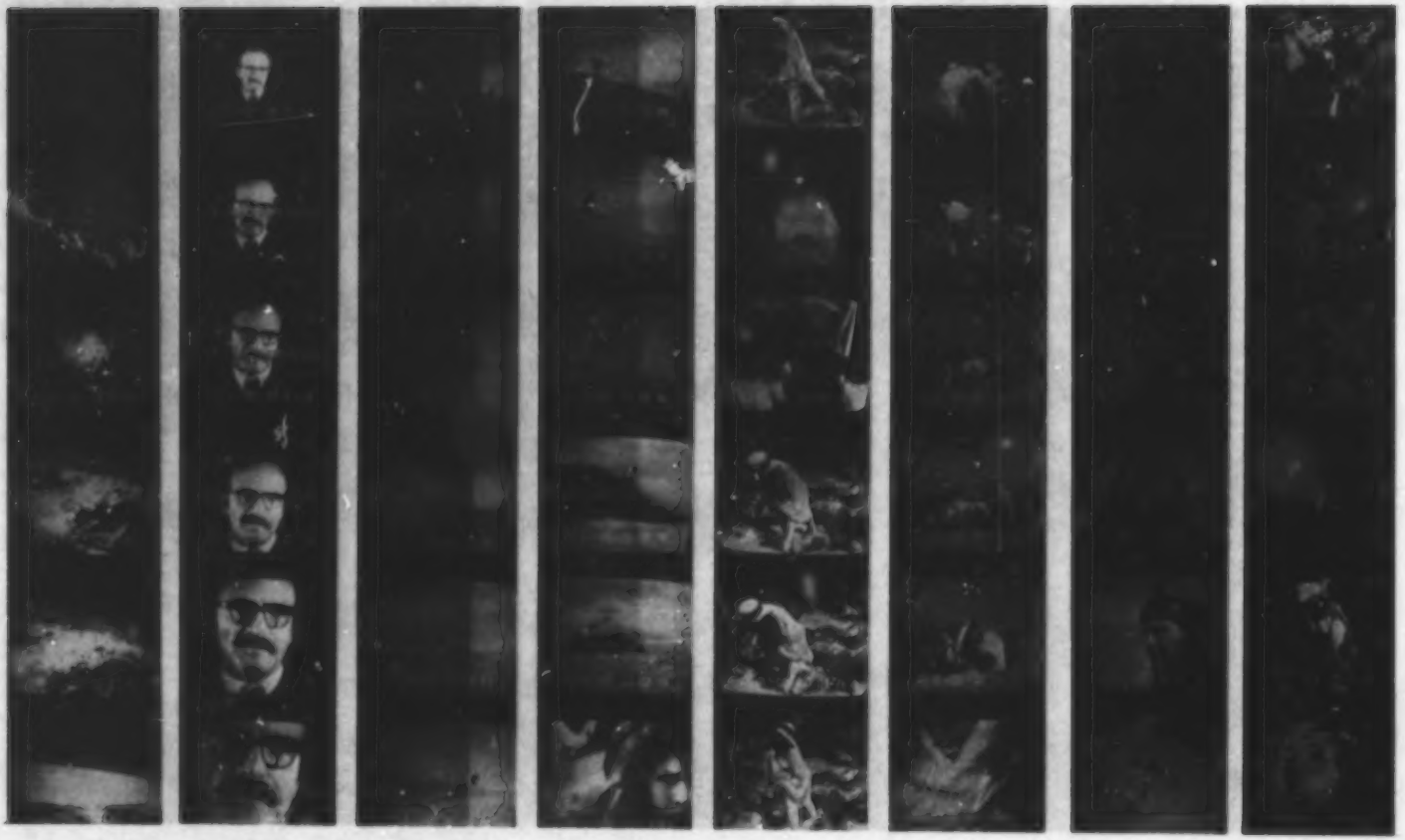
"SODOM AND GOMORRAH"

The motion picture film "Sodom and Gomorrah" was issued a "Certificate of Registration of a Claim to Copyright" by the Copyright Office on Nov. 14, 1975.

* A time-motion study is a chronological series of still photographs of a motion picture film, timed in their relative order of appearance, which, by "stopping" the movement appearing on the motion picture screen and recording the same, permits the type of conduct being portrayed thereon to be analyzed in a fair and accurate manner. Photographs have been taken every 3.6 seconds playing time.

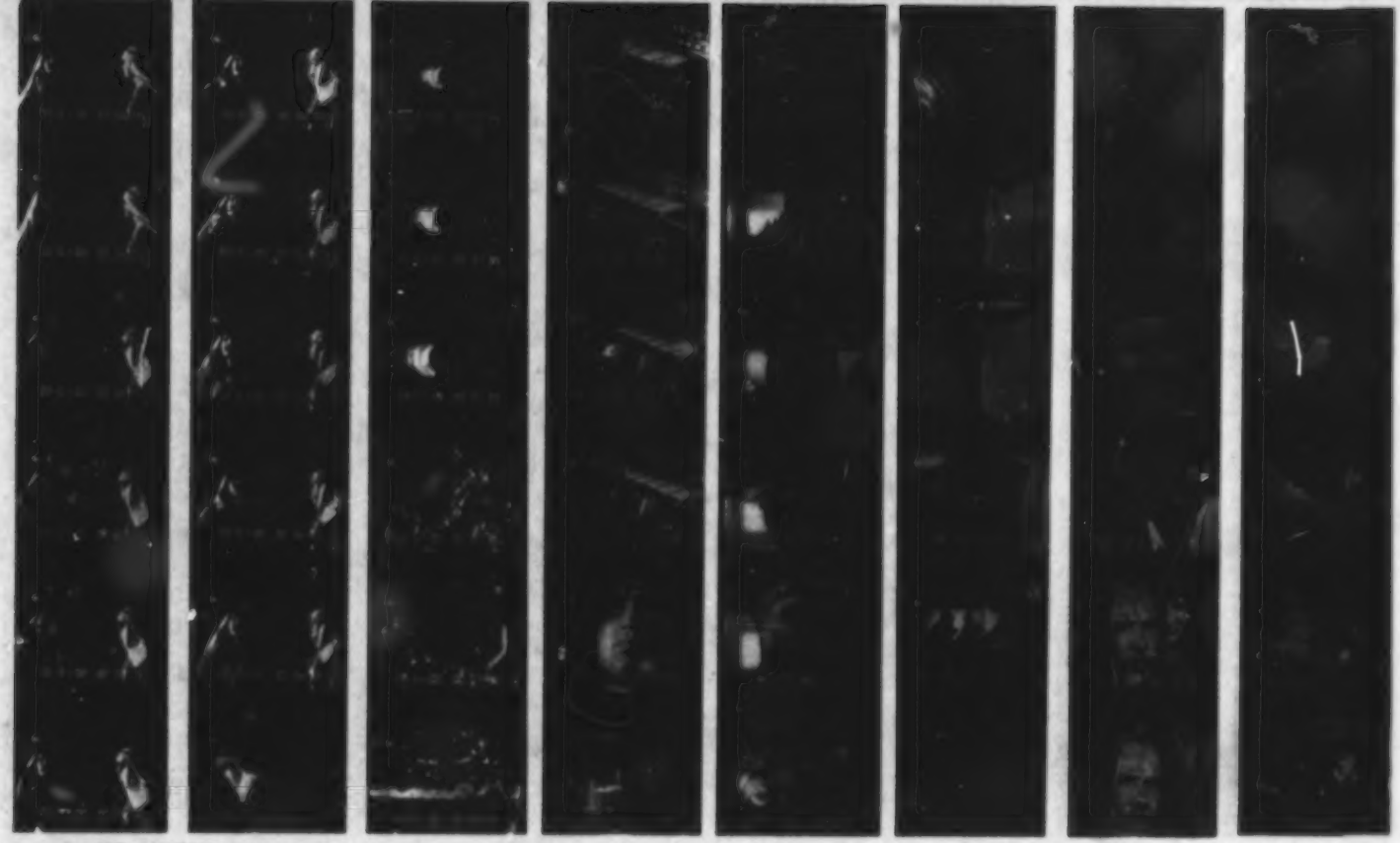
"SODOM AND GOMORRAH - THE LAST SEVEN DAYS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 45011) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 14, 1975).





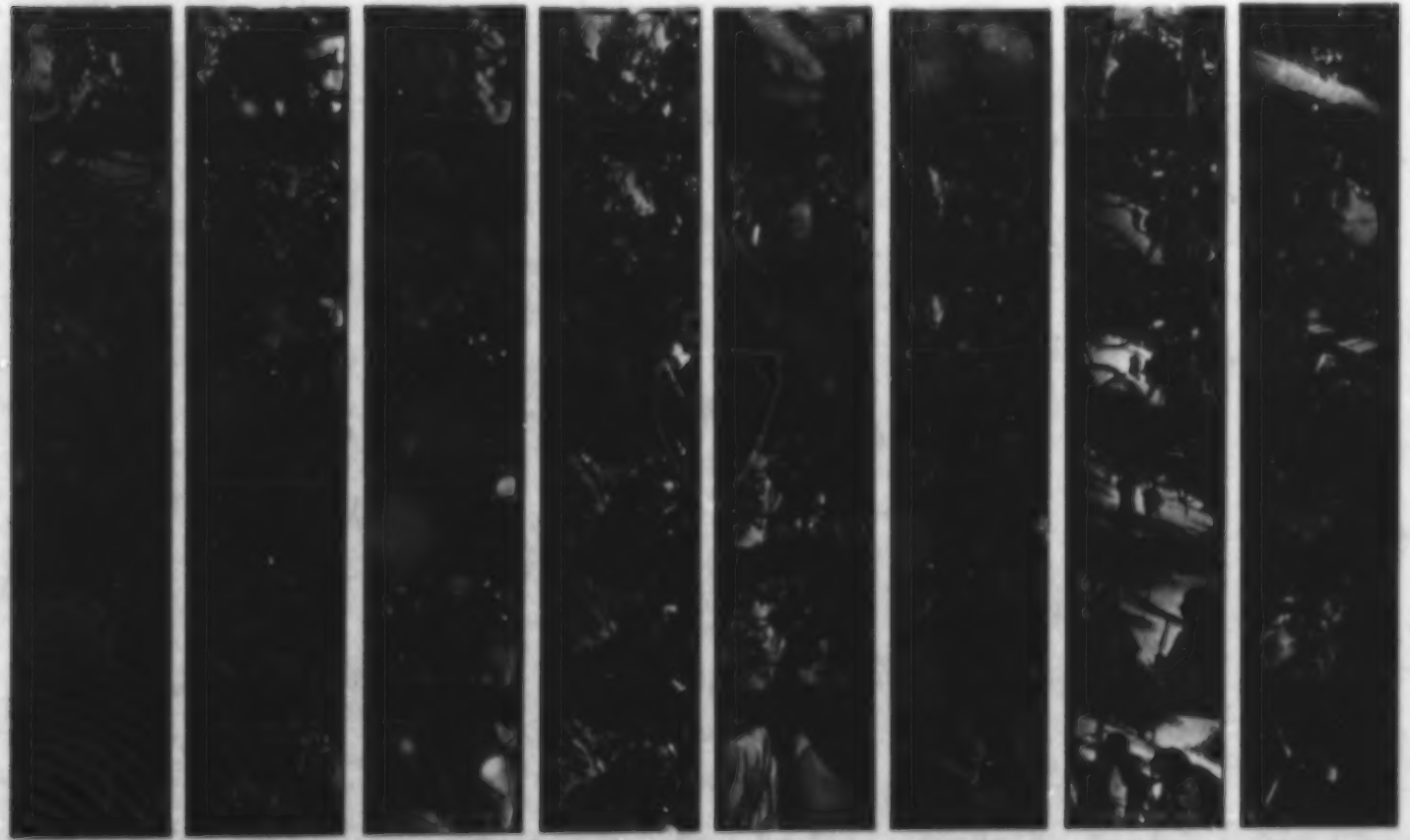
"SODOM AND GOMORRAH"
PART 1 OF 18 PARTS
(00:01-01:33) TITLE, "SODOM AND GOMORRAH" AND FACE OF NARRATOR. (01:36-03:12) MALE CHASING FEMALE, CATCHES HER, AND FORCES HER TO PERFORM FELLATIO. (03:15-03:40) FELLATIO. (03:47-04:19) FRIENDS OF FEMALE KILL MALE. (04:22-05:36) LOT AND PART OF FAMILY TO TALK TO STRANGERS.

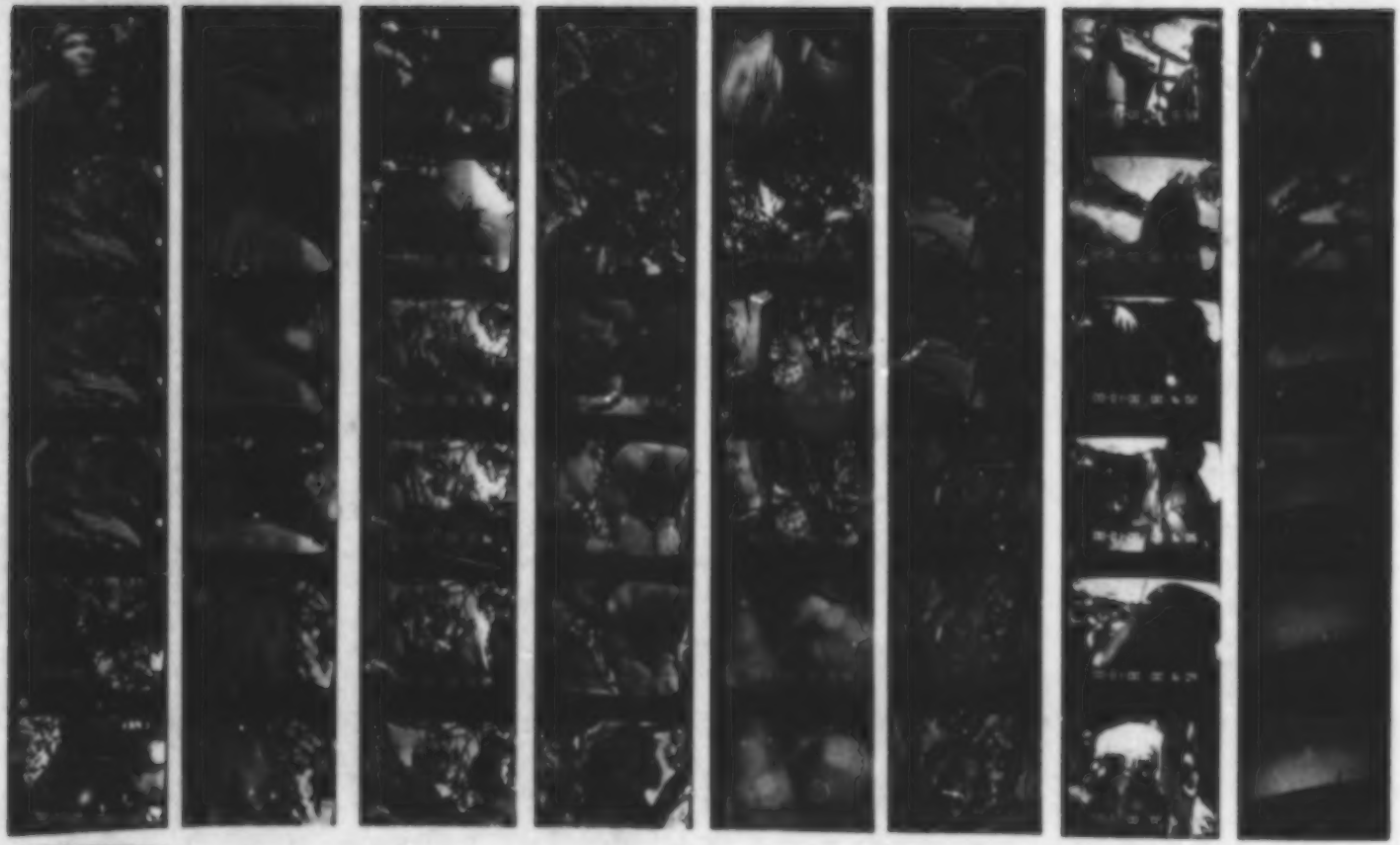
"SODOM AND GOMORRAH - THE LAST SEVEN DAYS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 45011) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 14, 1975).



"SODOM AND GOMORRAH"
PART 2 OF 18 PARTS
(05:40-07:05) LOT AND FAMILY DISCUSS MOVING. (07:08-08:47) SPACE SHOTS. INSIDE A SPACE SHIP A MONKEY DRESSED IN A CAPE AND HAT IS APPARENTLY TUNING IN ON LOT'S CONVERSATION. THE MONKEY'S VOICE HAS A "JOHN WAYNE" ACCENT (08:51-11:16) LOT AND FAMILY. MALE MEETS ONE OF LOT'S DAUGHTERS. THEY GO OFF INTO THE HILLS AND CLIMB A TREE

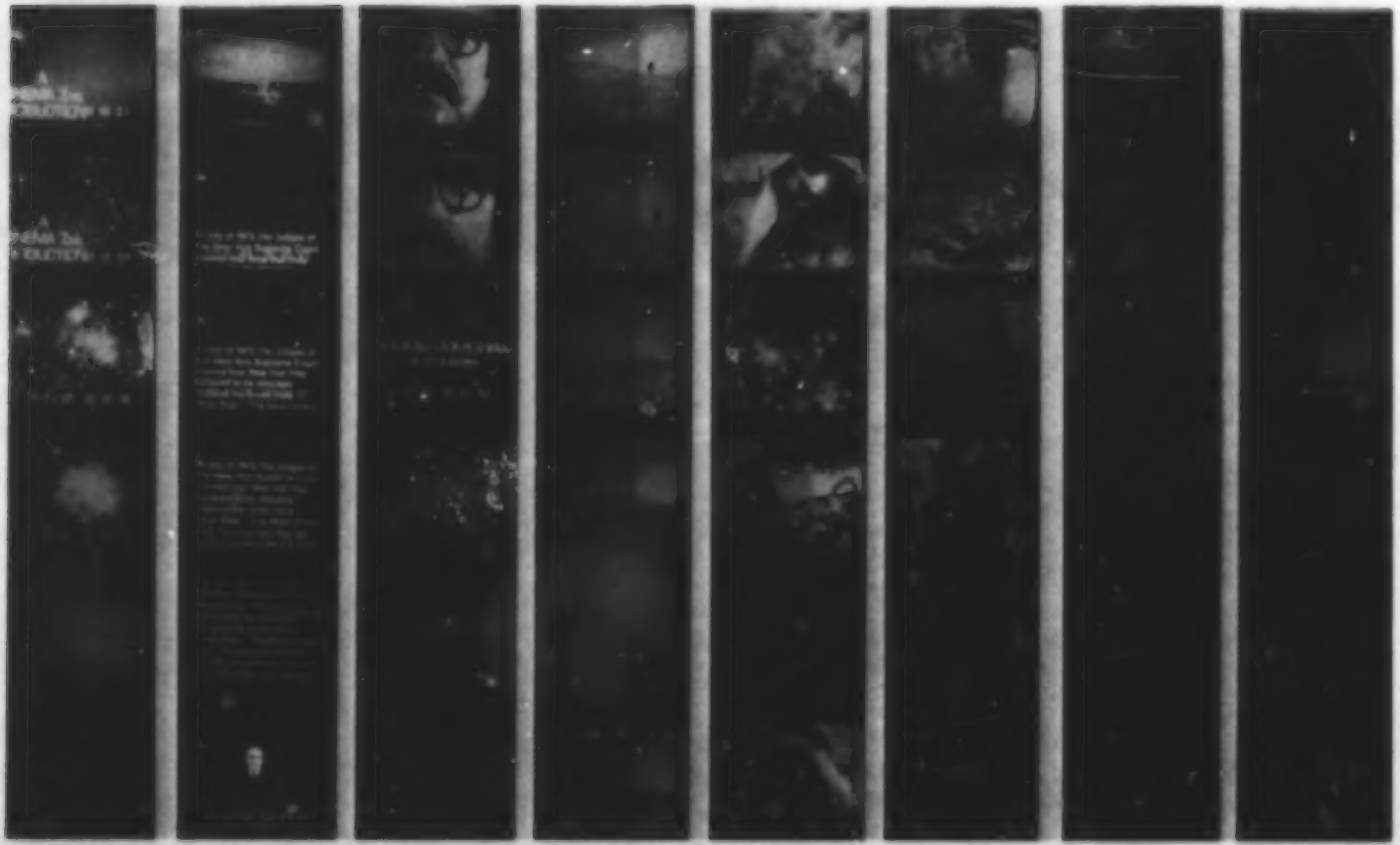
"SODOM AND GOMORRAH - THE LAST SEVEN DAYS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 45011; WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 14, 1975).





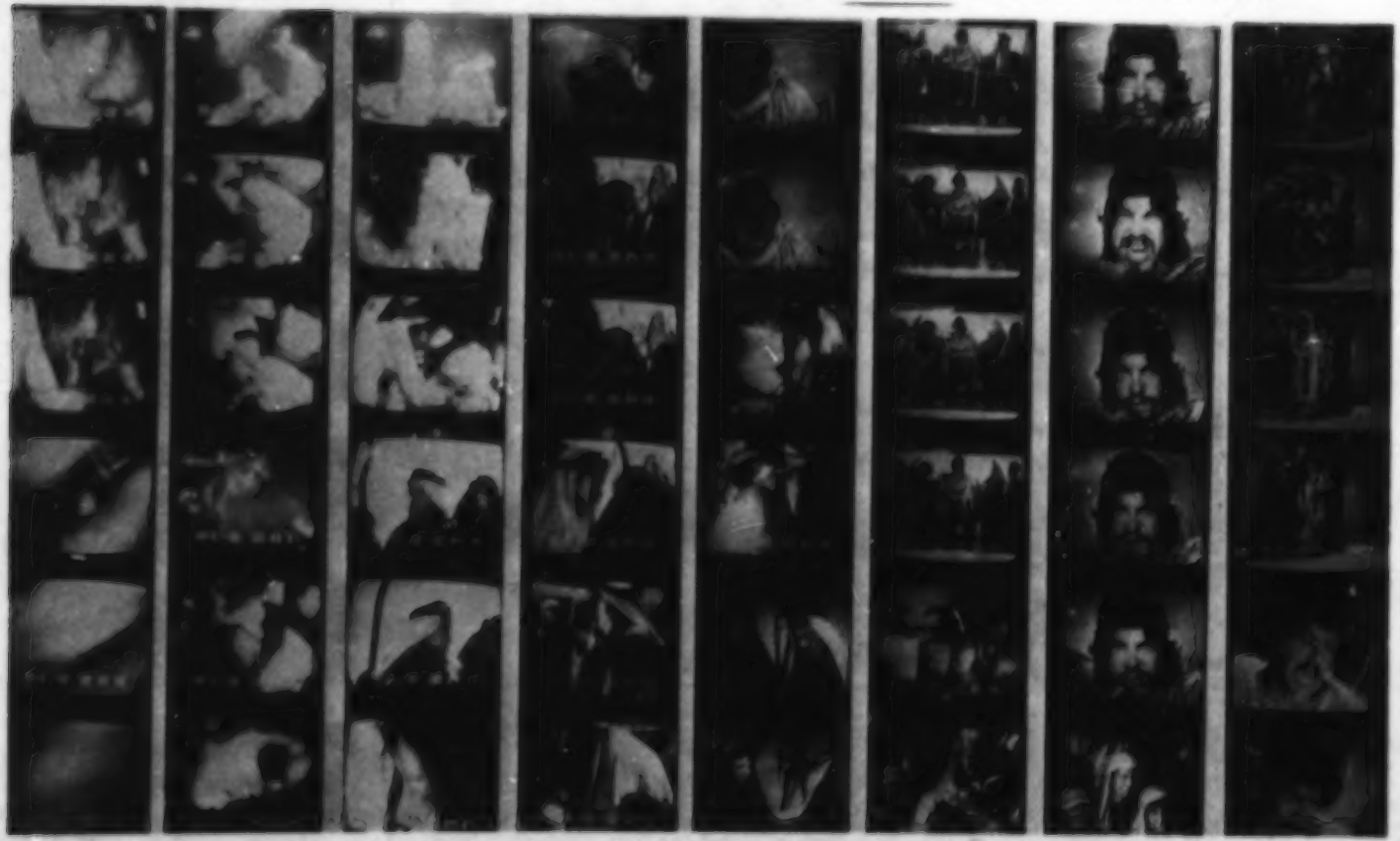
"SODOM AND GOMORRAH"
PART 3 OF 18 PARTS
(11:19-12:19) MALE AND FEMALE IN TREE. (12:23-13:16) MALE ENGAGES IN CUNNILINGUS WITH FEMALE. (13:19-14:02) MALE AND FEMALE DISCUSS THAT NORMAL INTERCOURSE IS AGAINST THE LAW. (14:05-15:33) COUPLE ENGAGES IN SODOMY IN A TREE. (15:37-16:12) MALE REMOVES PENIS FROM FEMALE'S ANUS AND EJACULATES. EJACULATION FALLS ON THE FACE OF LOT WHO IS UNDER THE TREE. (16:15-16:41) SCENE SHIFT TO SPACE SHIP AND MONKEY. (16:44-16:55) LOT GOES OFF ALONE TO PRAY.

"SODOM AND GOMORRAH - THE LAST SEVEN DAYS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 45011) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 14, 1975).



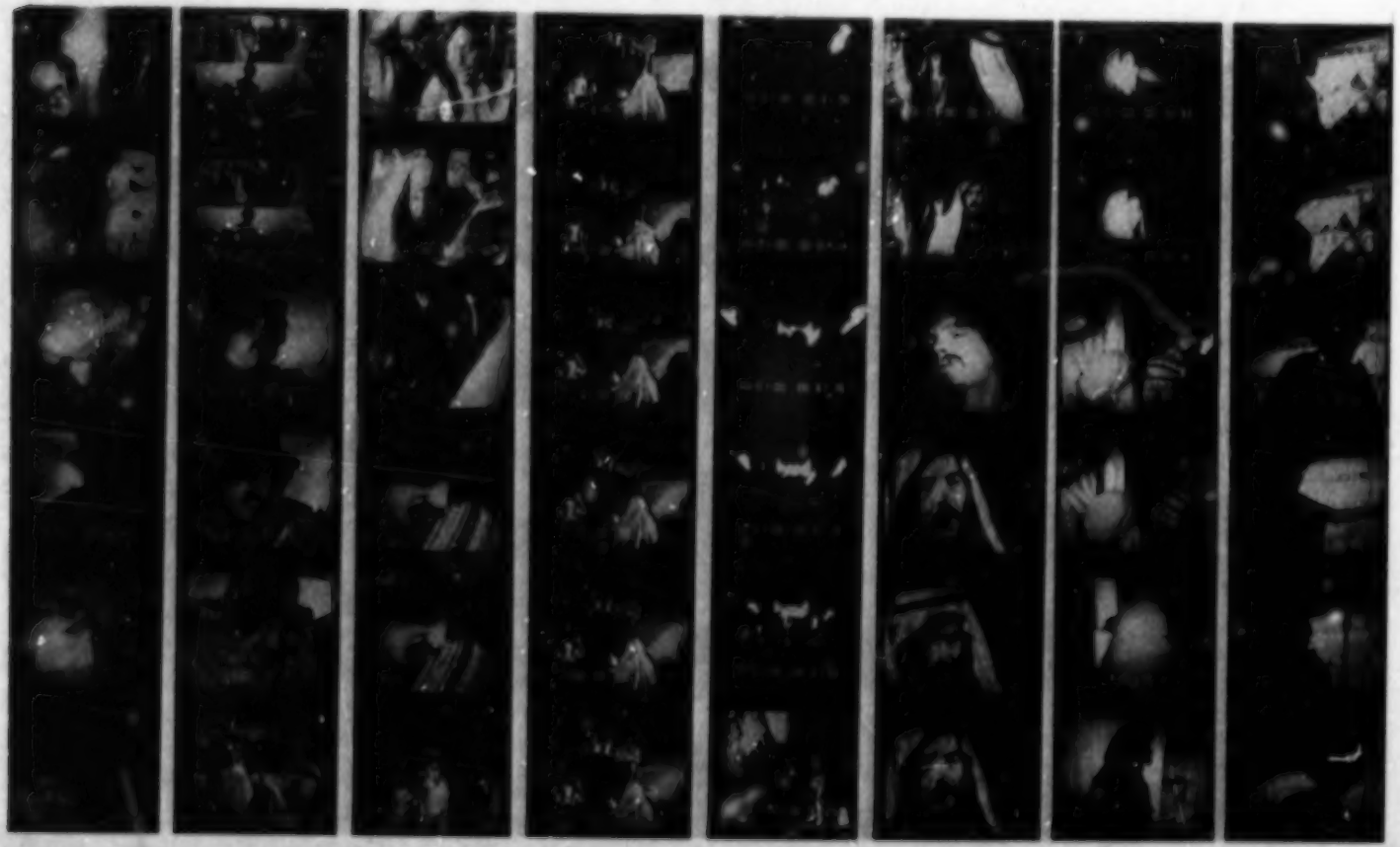
"SODOM AND GOMORRAH"
PART 4 OF 18 PARTS
(16:58-17:37) LOT PRAYS. (17:41-22:08) A MALE AND FEMALE MEET, TALK, AND THEN ENGAGE IN SEXUAL INTERCOURSE UNDER TREE. MALE WITH LONG BEARD AND STAFF APPROACHES MALE AND FEMALE UNDER TREE. (22:12-22:39) MALE WITH BEARD MASTURBATES AND FELLATES HIMSELF.

"SODOM AND GOMORRAH - THE LAST SEVEN DAYS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 45011) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 14, 1975).



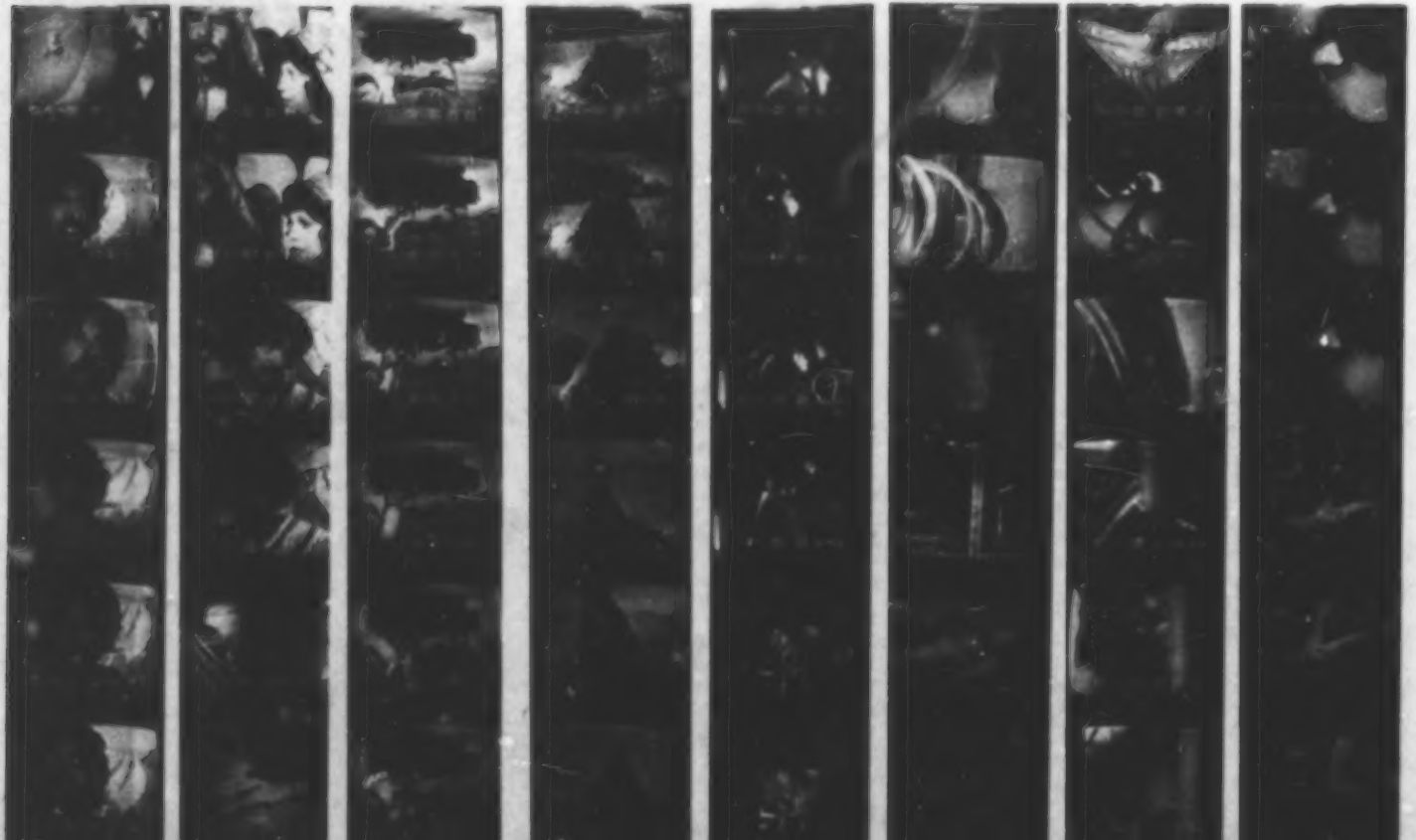
"SODOM AND GOMORRAH"
PART 5 OF 18 PARTS
(22:40-23:49) MALE WITH BEARD CONTINUES TO MASTURBATE WHILE WATCHING COUPLE ENGAGED IN INTERCOURSE. (23:54-24:38) SCENE SHIFTS. LOT AND HIS FAMILY ARRIVE IN SODOM. THEY WATCH SLAVE BUYING SCENE WHERE FEMALES ARE PUT ON AUCTION AND SOLD. (24:42-24:45) CUSTOMER INSPECTS FEMALE VAGINAL AREA. (24:49-26:28) SCENES OF SLAVE MARKET. (26:31-27:07) KING OF SODOM. (27:10-28:11) LOT AND FAMILY TALKING IN FRONT OF THE KING OF SODOM, AS SLAVE AUCTION CONTINUES.

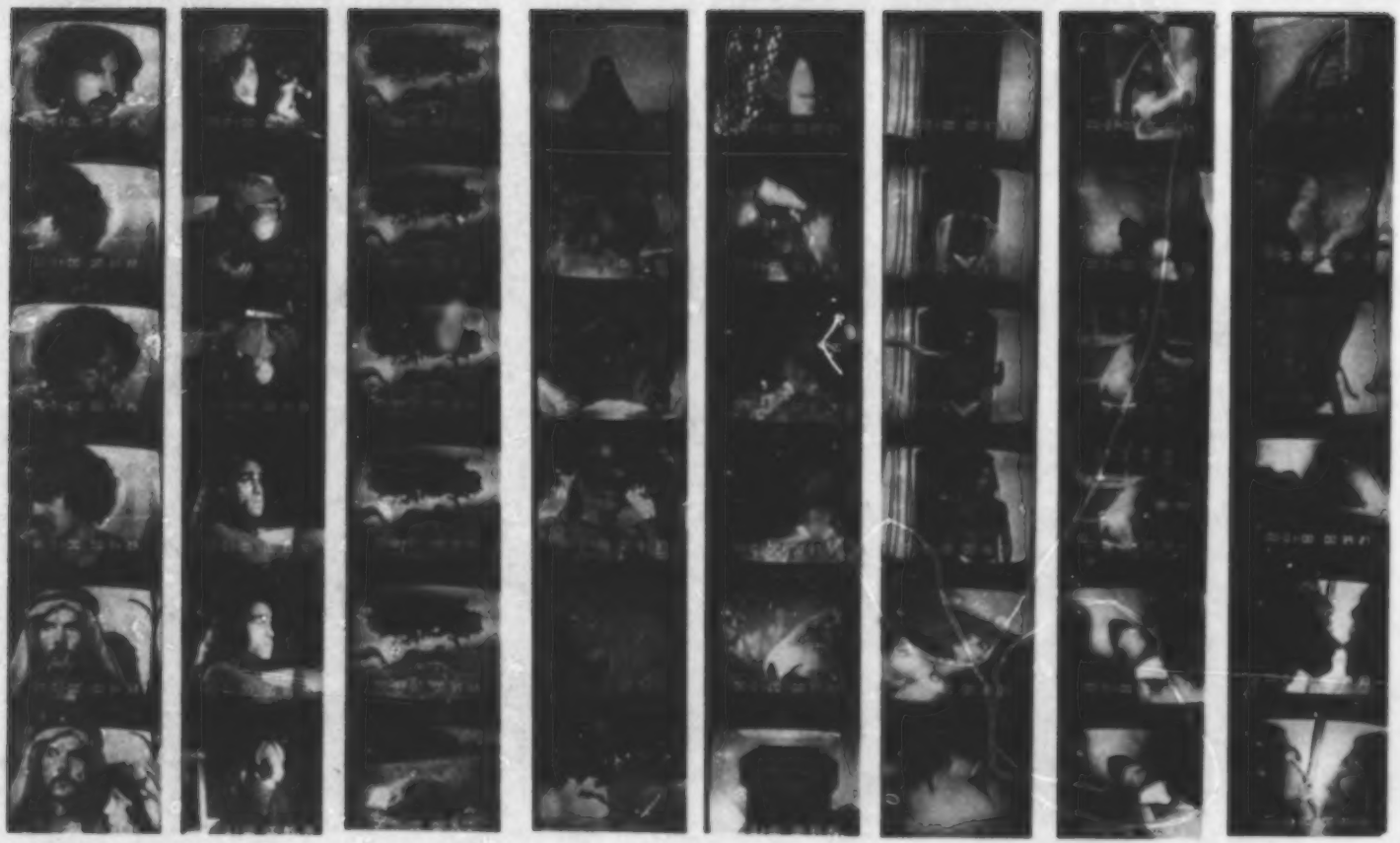
"SODOM AND GOMORRAH - THE LAST SEVEN DAYS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 45011) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 14, 1975).



"SODOM AND GOMORRAH"
PART 6 OF 18 PARTS
(28:17-28:49) GENITALS ARE SHOWN. FEMALE LICKS FINGERS. (28:53-33:54) KING OF SODOM TALKS WITH LOT AND HIS WIFE.

"SODOM AND GOMORRAH - THE LAST SEVEN DAYS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 45011) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 14, 1975).





"SODOM AND GOMORRAH"
PART 7 OF 18 PARTS
(33:58-34:54) KING OF SODOM CONTINUES TALKING WITH LOT. (34:58-39:34) SPACE SHIP INTERIOR SHOW MONKEY AND MALE ASSISTANT DRESSED IN BATHING SUIT AND CAPE. LOT GOES OFF TO PRAY AGAIN. SCENE SWITCHES TO MALE IN SPACE SHIP. HE ENTERS ROOM WHERE NUDE FEMALE RESTS IN GLASS CASE. MALE PRESSES AGAINST AGAINST CASE AND BEGINS TO MASTURBATE.

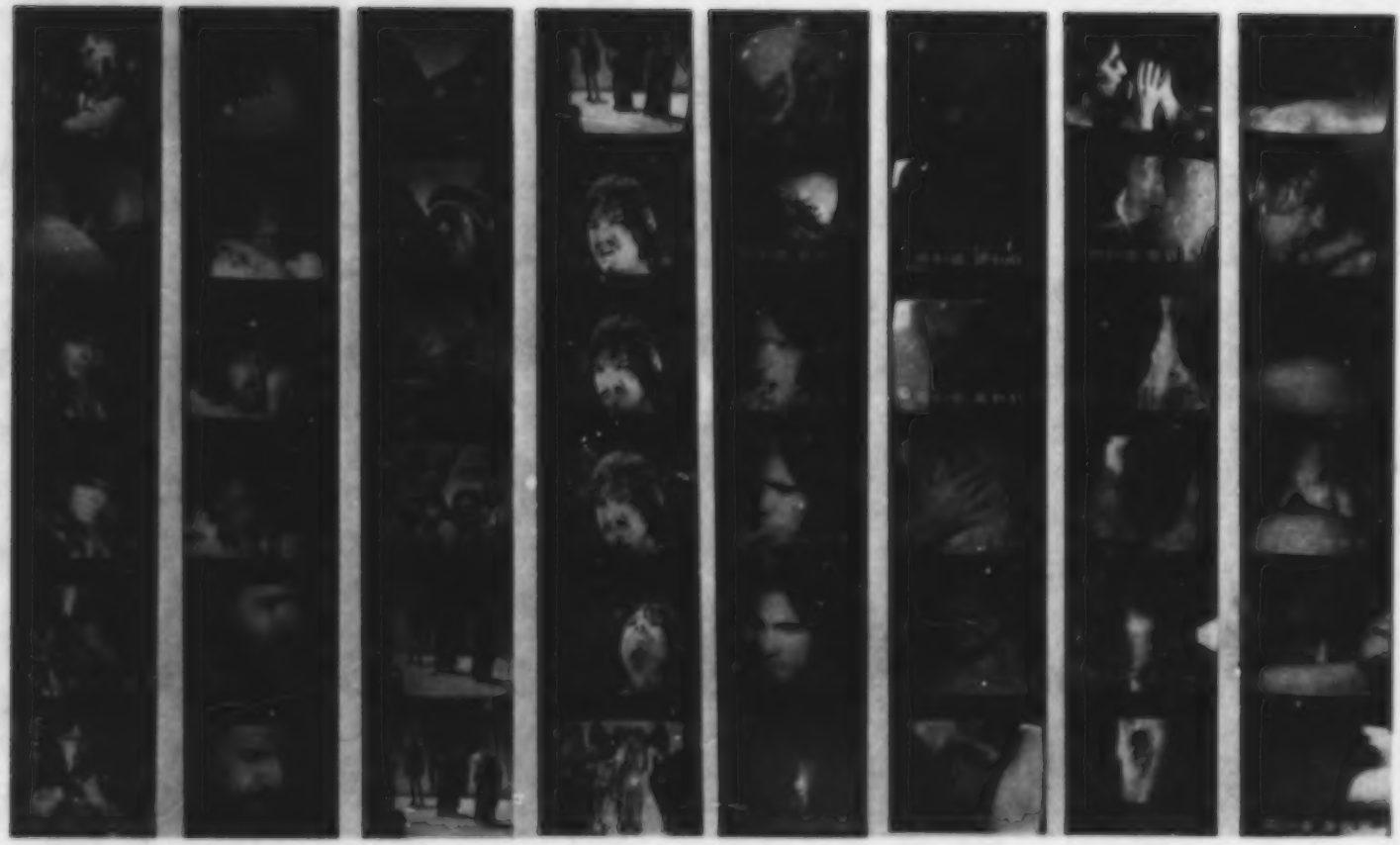
"SODOM AND GOMORRAH - THE LAST SEVEN DAYS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 45011) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 14, 1975).

"SODOM AND GOMORRAH"
PART 8 OF 18 PARTS
(39:37-41:52) MALE MASTURBATES AGAINST CASE, EJACULATES INTO TUBE. (41:55-42:20) MALE THEN TALKS WITH MOOSE HANGING ON WALL. (42:23-45:13) MALE FROM SPACE SHIP SHOWN ON EARTH DRESSED IN BIBLICAL CLOTHES TALKING WITH ONE OF LOT'S DAUGHTERS.

"SODOM AND GOMORRAH - THE LAST SEVEN DAYS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 45011) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 14, 1975).

"SODOM AND GOMORRAH"
PART 9 OF 10 PARTS
(45:17-45:34) SPACE SHIP MALE NOW DRESSED IN EARTH CLOTHES TALKS WITH DAUGHTERS. (45:39-45:49) LOT AND HIS WIFE SELLING THINGS AT A STORE THEY HAVE SET UP IN SODOM. (45:52-46:13) A MALE GOES IN BACK SECTION OF TENT WITH LOT'S WIFE. MALE PLACES CUCUMBER IN THE VAGINA OF LOT'S WIFE, THEN PLACES CUCUMBER IN HIS MOUTH. (46:17-48:03) MALE AND LOT'S WIFE CONTINUE WITH CUCUMBER. (48:07-48:45) LOT AND WIFE AND OTHER PEOPLE TALKING. (48:49-50:53) KING OF SODOM TALKS TO THE PEOPLE.

"SODOM AND GOMORRAH - THE LAST SEVEN DAYS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 45011) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 14, 1975).

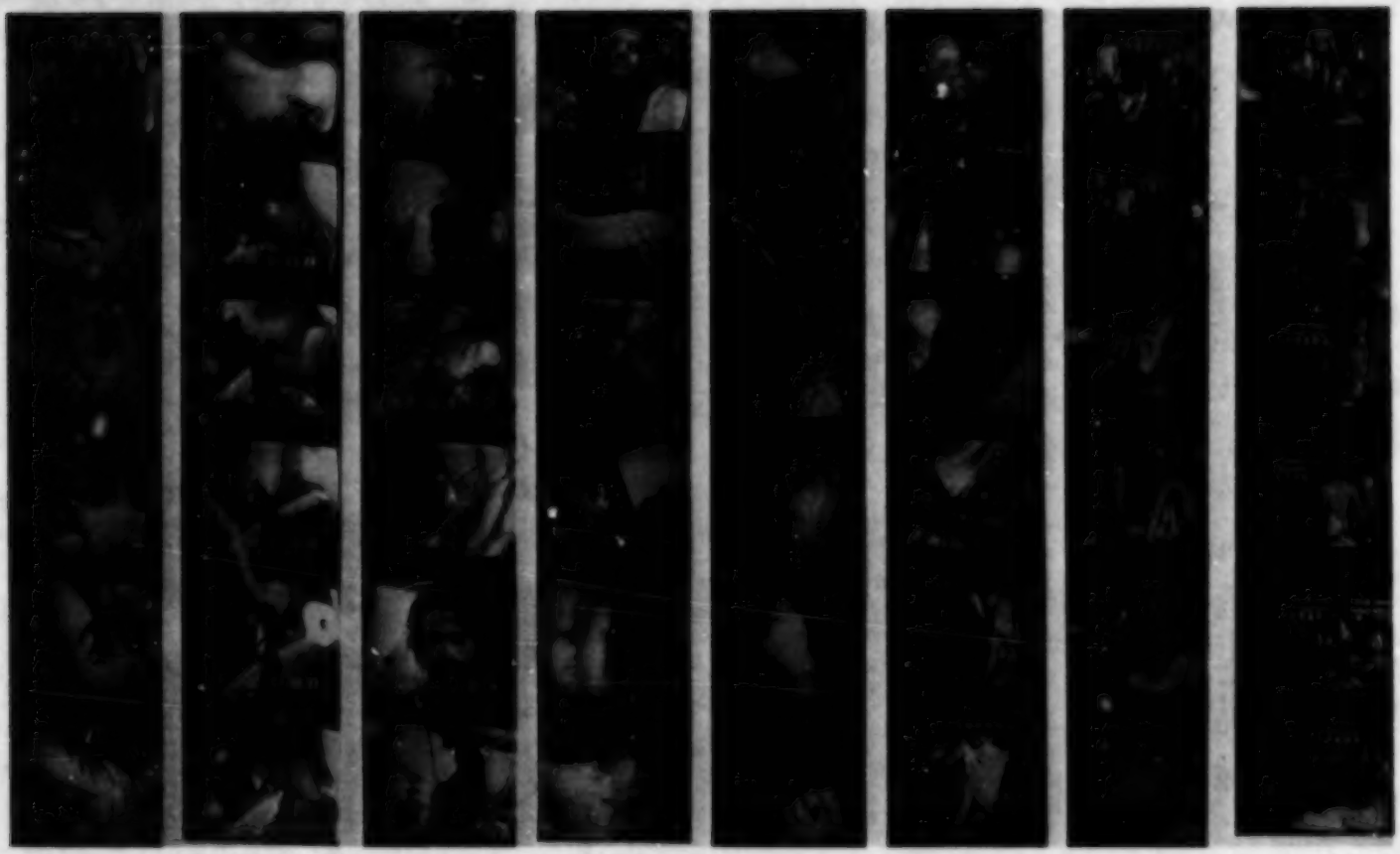


"SODOM AND GOMORRAH"
PART 10 OF 18 PARTS
(50:56-51:35) PEOPLE SPEAK WITH KING OF SODOM. (51:39-52:25) A MALE PLACES PIECE OF CHICKEN AGAINST VAGINA OF FEMALE AND THEN EATS CHICKEN. (52:28-54:43) PEOPLE CONTINUE TALKING. (54:46-56:32) FEMALES ENGAGE IN LESBIAN-TYPE KISSING OF BREASTS.

"SODOM AND GOMORRAH - THE LAST SEVEN DAYS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 45011) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 14, 1975).

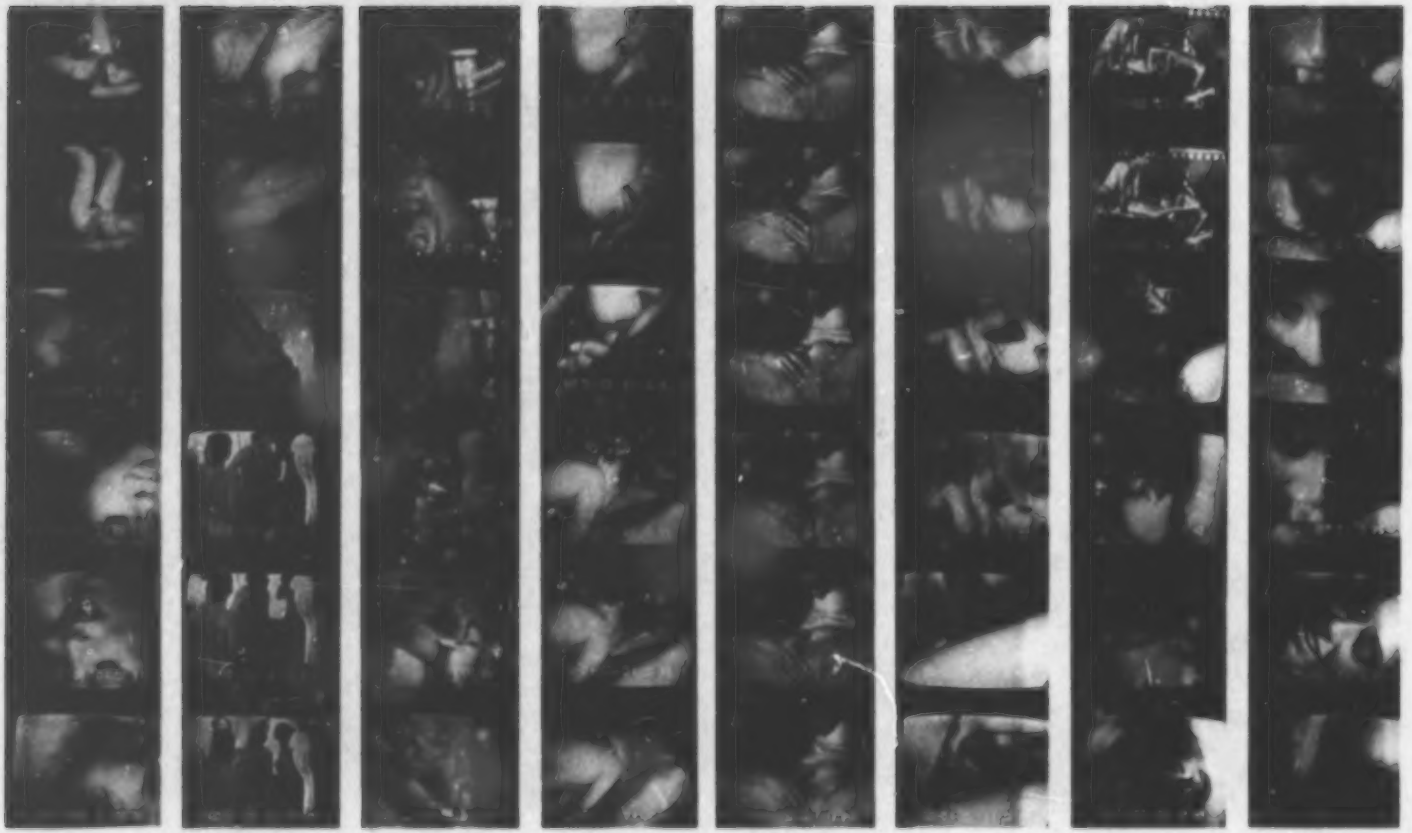
"SODOM AND GOMORRAH"
PART 11 OF 18 PARTS
(56:35-57:43) LESBIANISM CONTINUES AND KING OF SODOM KISSES A FEMALE NEAR THE VAGINA AREA. (57:47-57:50) KING OF SODOM. (57:54-1:01:30) OUTDOOR SCENES - MARKET PLACE. PEOPLE EATING AND DRINKING. (1:01:33-1:02:01) FELLATIO. (1:02:05-1:02:13) FEMALES LAUGHING.

"SODOM AND GOMORRAH - THE LAST SEVEN DAYS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 45011) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 14, 1975).



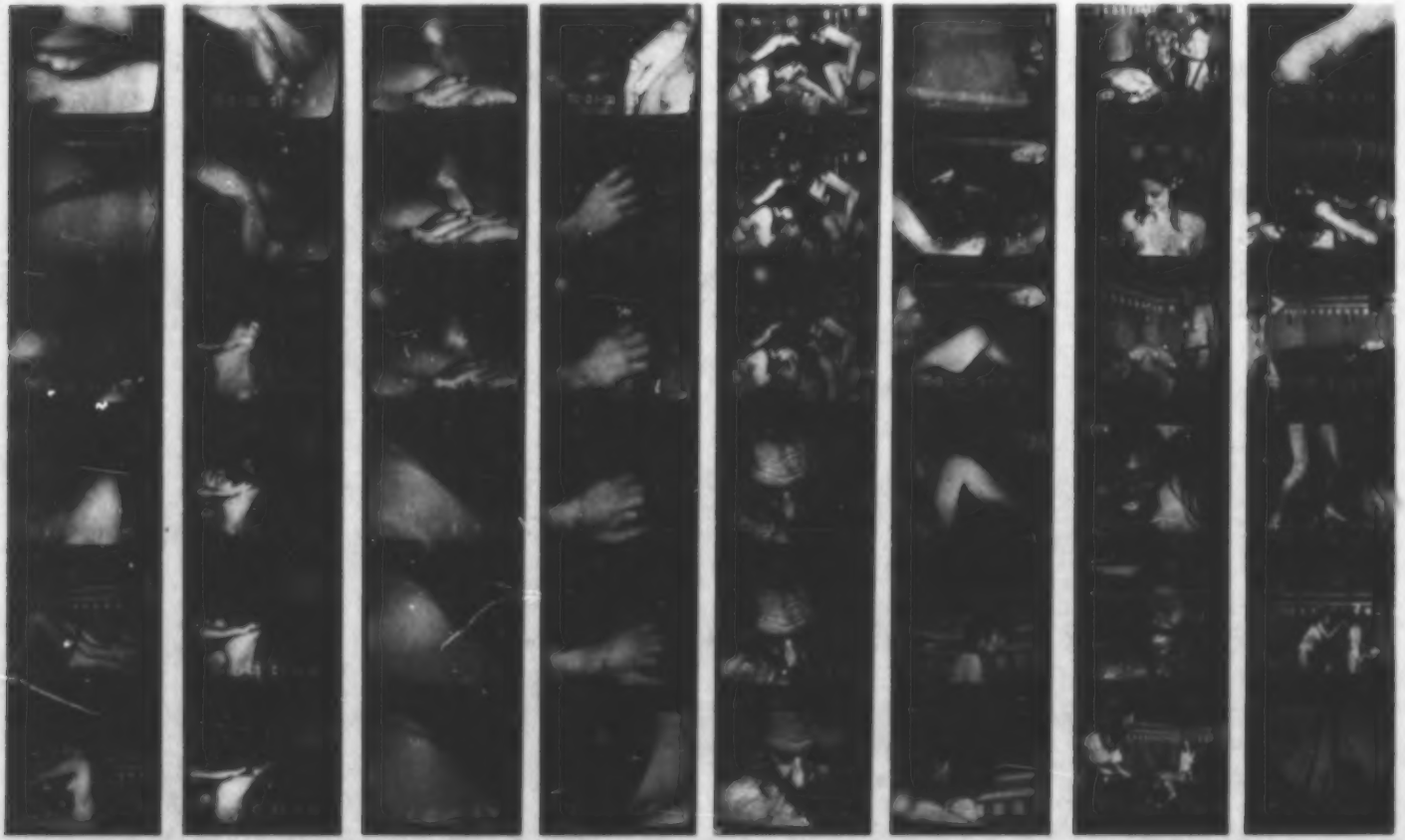
"SODOM AND GOMORRAH"
PART 12 OF 18 PARTS
(1:02:16-1:02:33) FELLATIO. (1:02:44-1:03:05) MALE PLACES BANANA IN FEMALE'S VAGINA, THEN PLACES BANANA IN HER MOUTH. (1:03:09-1:03:51) FELLATIO. (1:03:55-1:04:09) ANALINGUS. (1:04:12) FELLATIO. (1:04:16-1:07:52) CUNNILINGUS, FELLATIO, SEXUAL ORGY.

"SODOM AND GOMORRAH - THE LAST SEVEN DAYS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 45011) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 14, 1975).



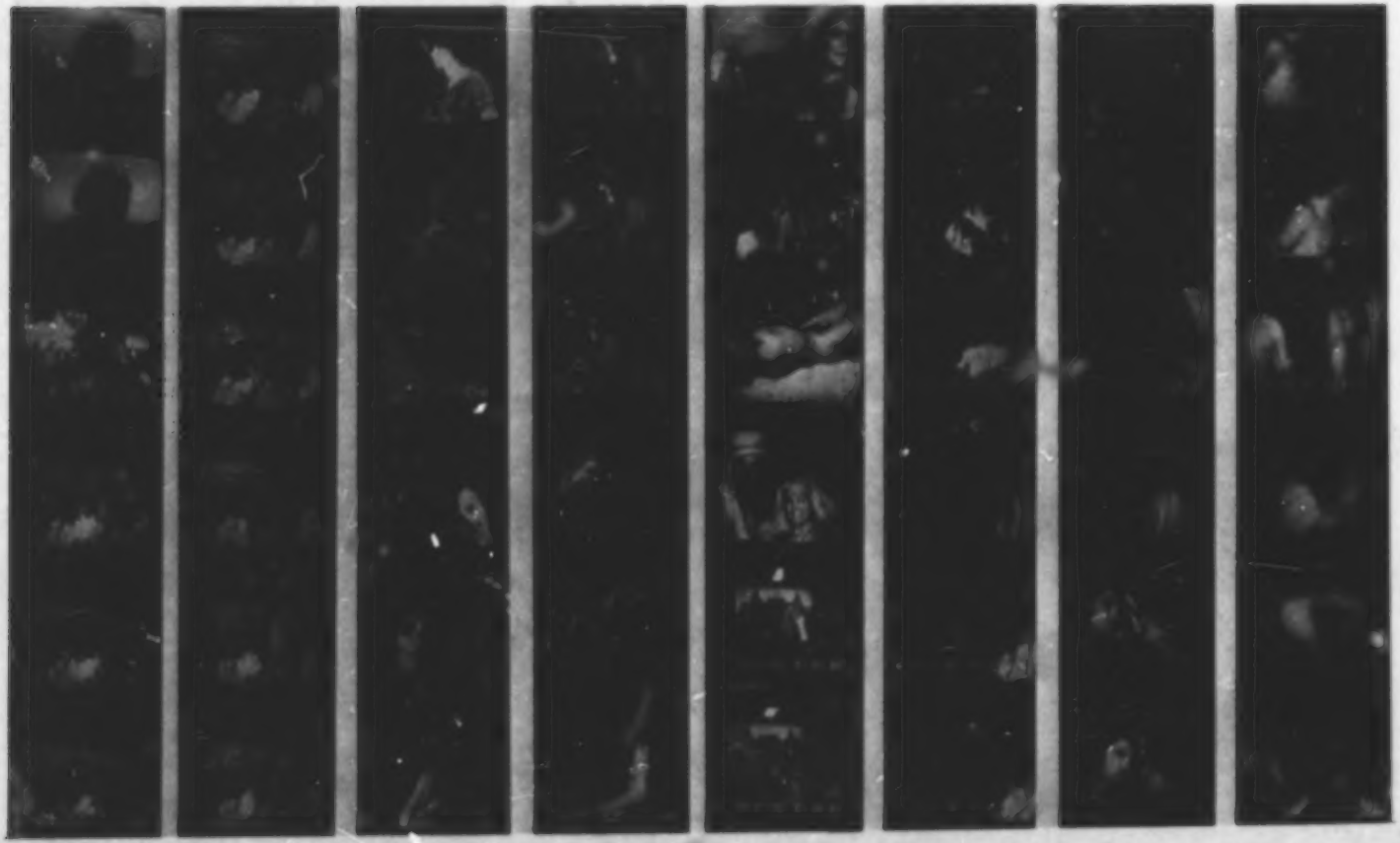
"SODOM AND GOMORRAH"
PART 13 OF 18 PARTS
(1D7:55-133:32) SEXUAL ORGY CONTINUES. CUNNILINGUS, SEXUAL INTERCOURSE, MASTURBATION, EJACULATION INTO A GOLD CUP; LESBIANISM.

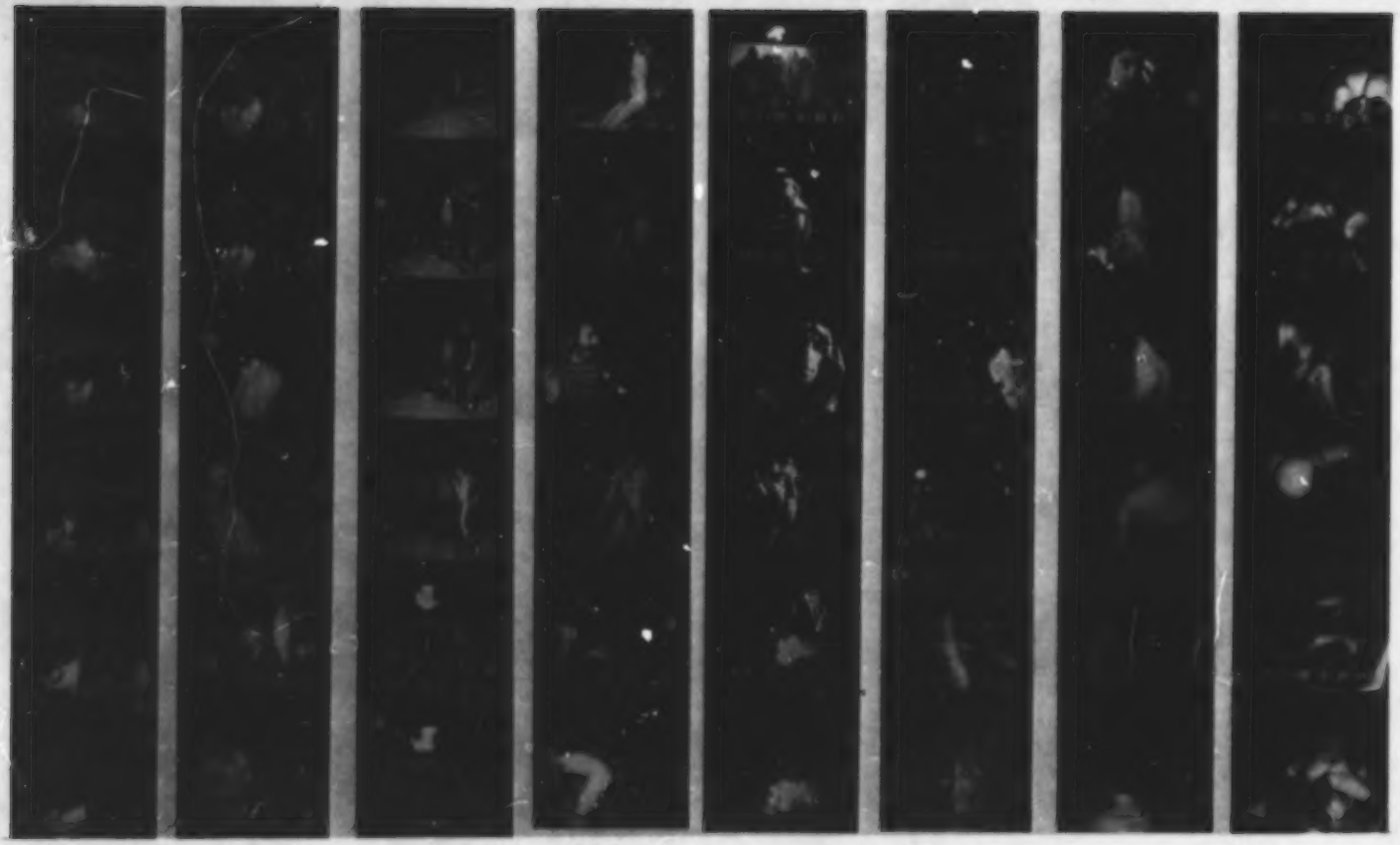
"SODOM AND GOMORRAH - THE LAST SEVEN DAYS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 45011) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 14, 1975).



"SODOM AND GOMORRAH"
PART 14 OF 18 PARTS
(1:13:36-1:19:12) SEXUAL ORGY CONTINUES. CUNNILINGUS, MASTURBATION, TWO FEMALES FELLATE PENIS, BLACK MALE SODOMIZES WHITE MALE WITH CUCUMBER. SCENE SHIFT TO OUTDOORS. MALE MASTURBATES NEAR DONKEY WHICH RUNS AWAY.

"SODOM AND GOMORRAH - THE LAST SEVEN DAYS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 45011) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 14, 1975).

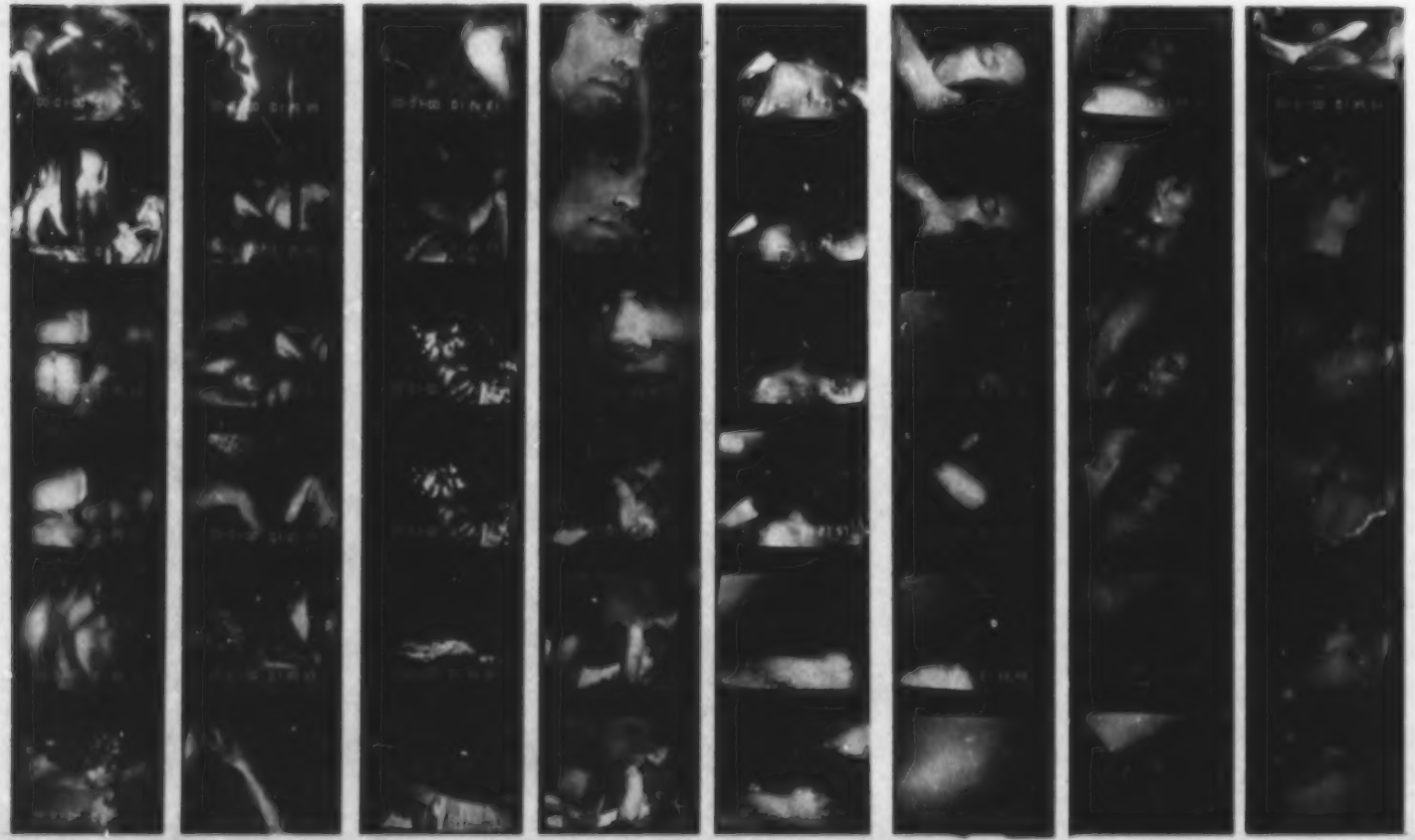




"SODOM AND GOMORRAH"
PART 15 OF 18 PARTS
(12°:16-12°:52) GROUP OF MALES AND FEMALES BY FIRE. MAN FROM SPACE SHIP FIGHTS WITH LONG-HAIRED, SHAGGY EARTHLING. THEY HAVE FIGHT AROUND FIRE.

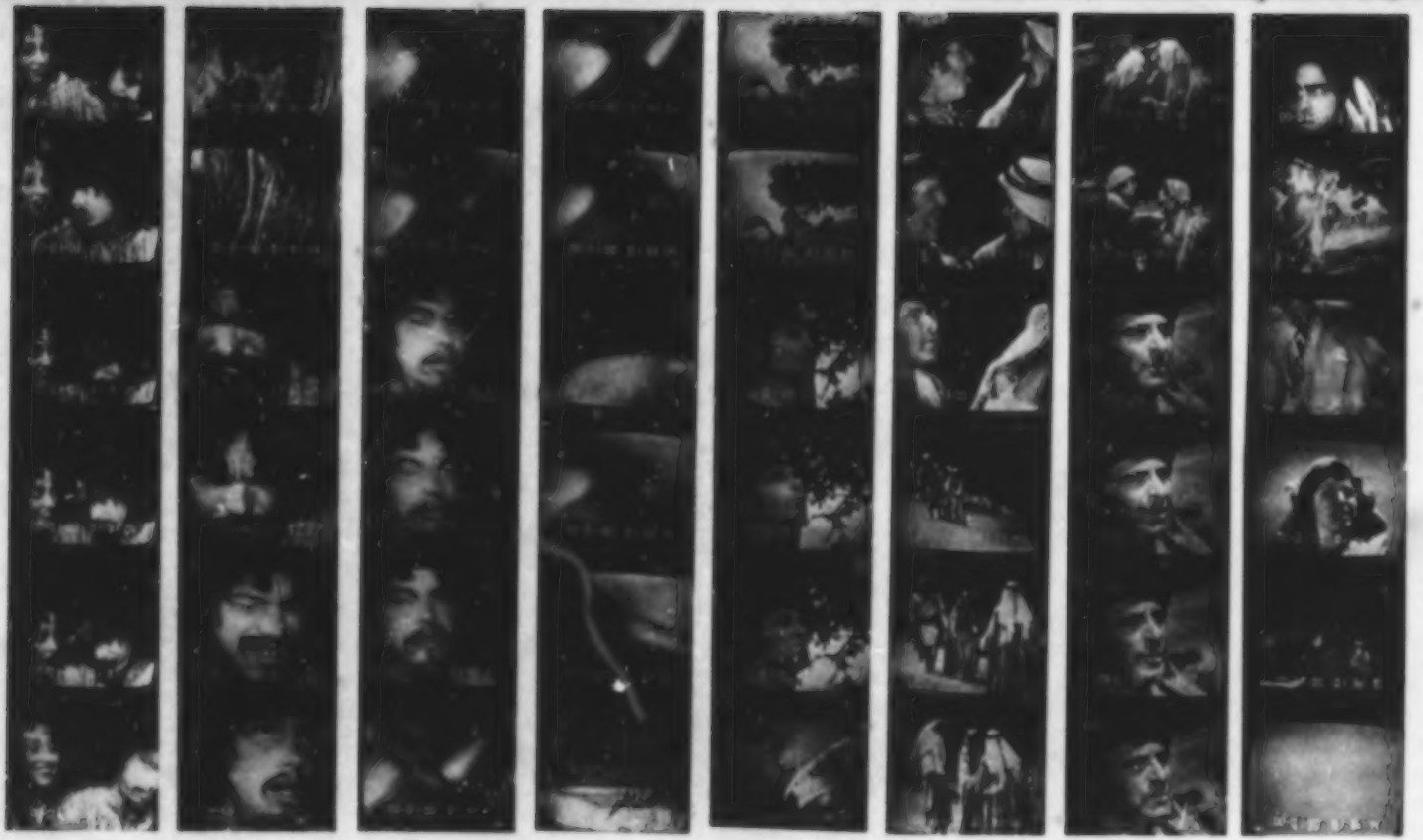
"SODOM AND GOMORRAH - THE LAST SEVEN DAYS":

CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 45011) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 14, 1975).



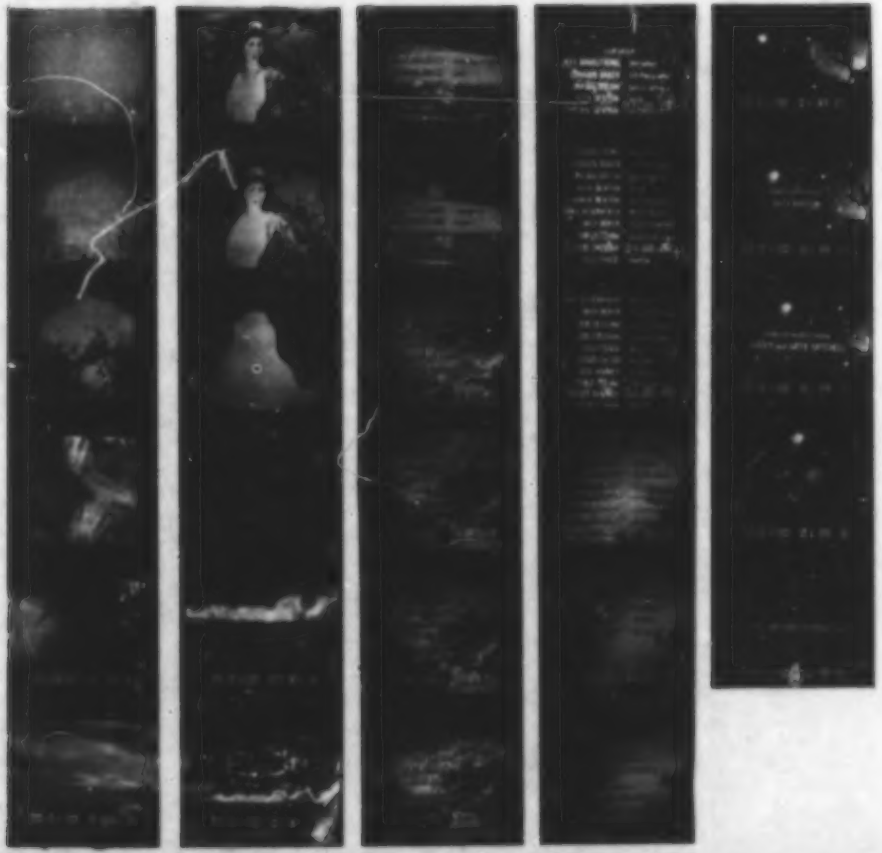
"SODOM AND GOMORRAH"
PART 16 OF 18 PARTS
(1:24:56-1:24:59) SPACE MAN WINS FIGHT. (1:25:03-1:30:33) VARIOUS PEOPLE TALKING - SEXUAL ACTIVITY BETWEEN GROUPS OF MALES AND FEMALES. FELLATIO, CUNNILINGUS, SEXUAL INTERCOURSE.

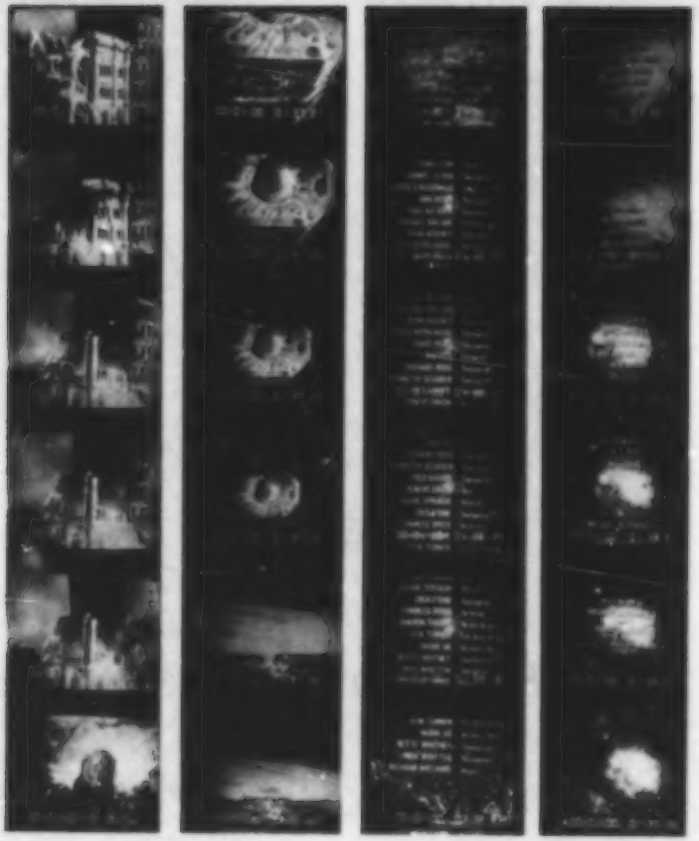
"SODOM AND GOMORRAH - THE LAST SEVEN DAYS"; CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 45011) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 14, 1975).



"SODOM AND GOMORRAH"
PART 17 OF 18 PARTS
(E30:36-E33:20) KING OF SODOM IN SEXUAL INTERCOURSE. (E33:23-E36:14) SCENE SHIFTS OUTDOORS. LOT AND FAMILY LEAVE SODOM. FEMALE TALKS TO SPACEMAN. SPACE MONKEY IN SPACESHIP DECIDES TO DESTROY SODOM.

"SODOM AND GOMORRAH - THE LAST SEVEN DAYS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 45011) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 14, 1975).





"SODOM AND GOMORRAH"
PART 18 OF 18 PARTS
(1:36:17-1:36:56) SCENES OF SODOM BLOWN UP BY A BOMB. (1:37:00-1:39:22) LOT'S WIFE LOOKS BACK AND TURNS TO SALT. SPACE SHIP SHOWN GOING OFF IN SPACE AS CREDITS APPEAR AND FEATURE ENDS.

APPENDIX D

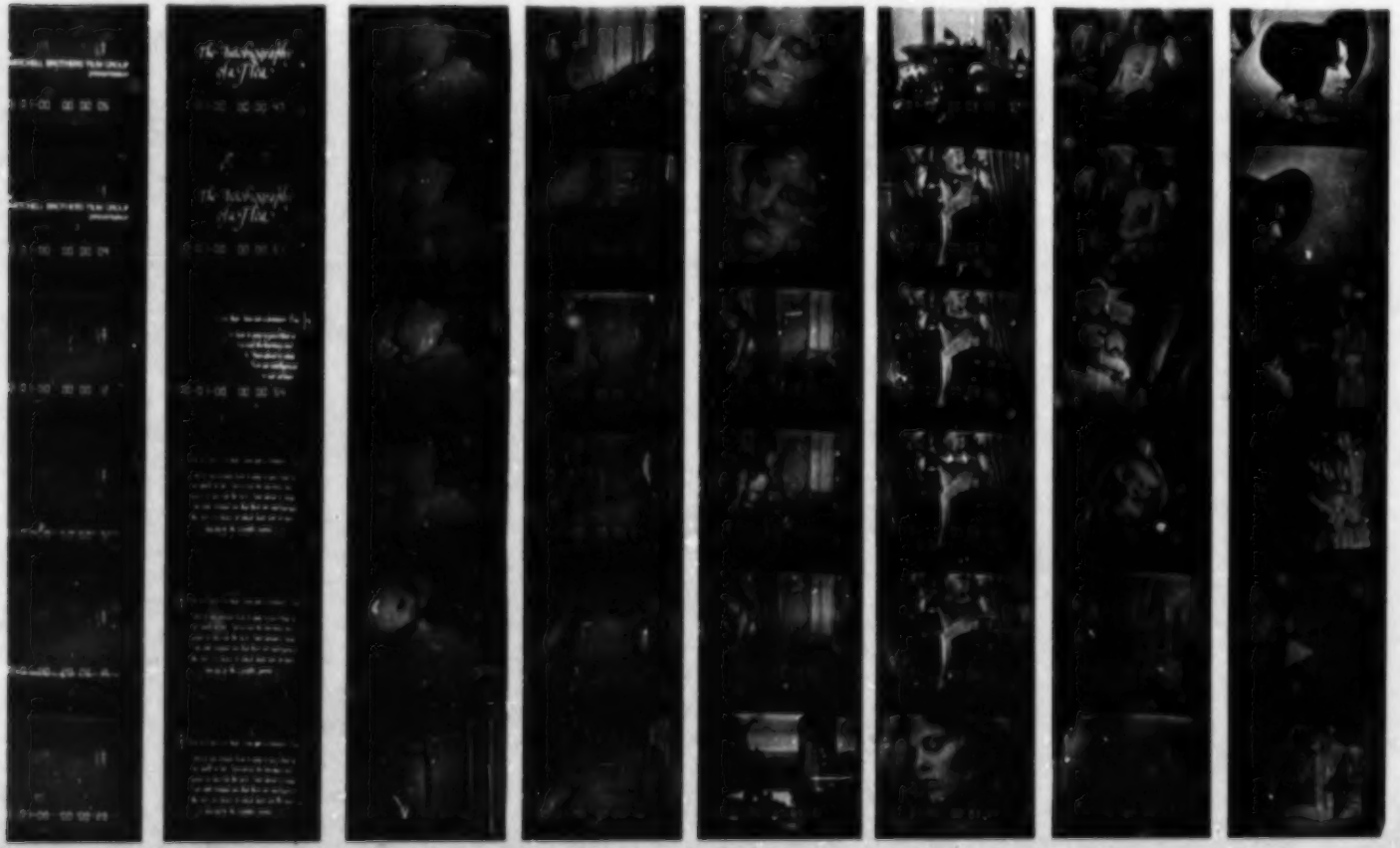
TIME-MOTION STUDY* OF THE FILM

"THE AUTOBIOGRAPHY OF A FLEA"

The motion picture film "The Autobiography of a Flea" was issued a "Certificate of Registration of a Claim to Copyright" by the Copyright Office on Oct. 12, 1976.

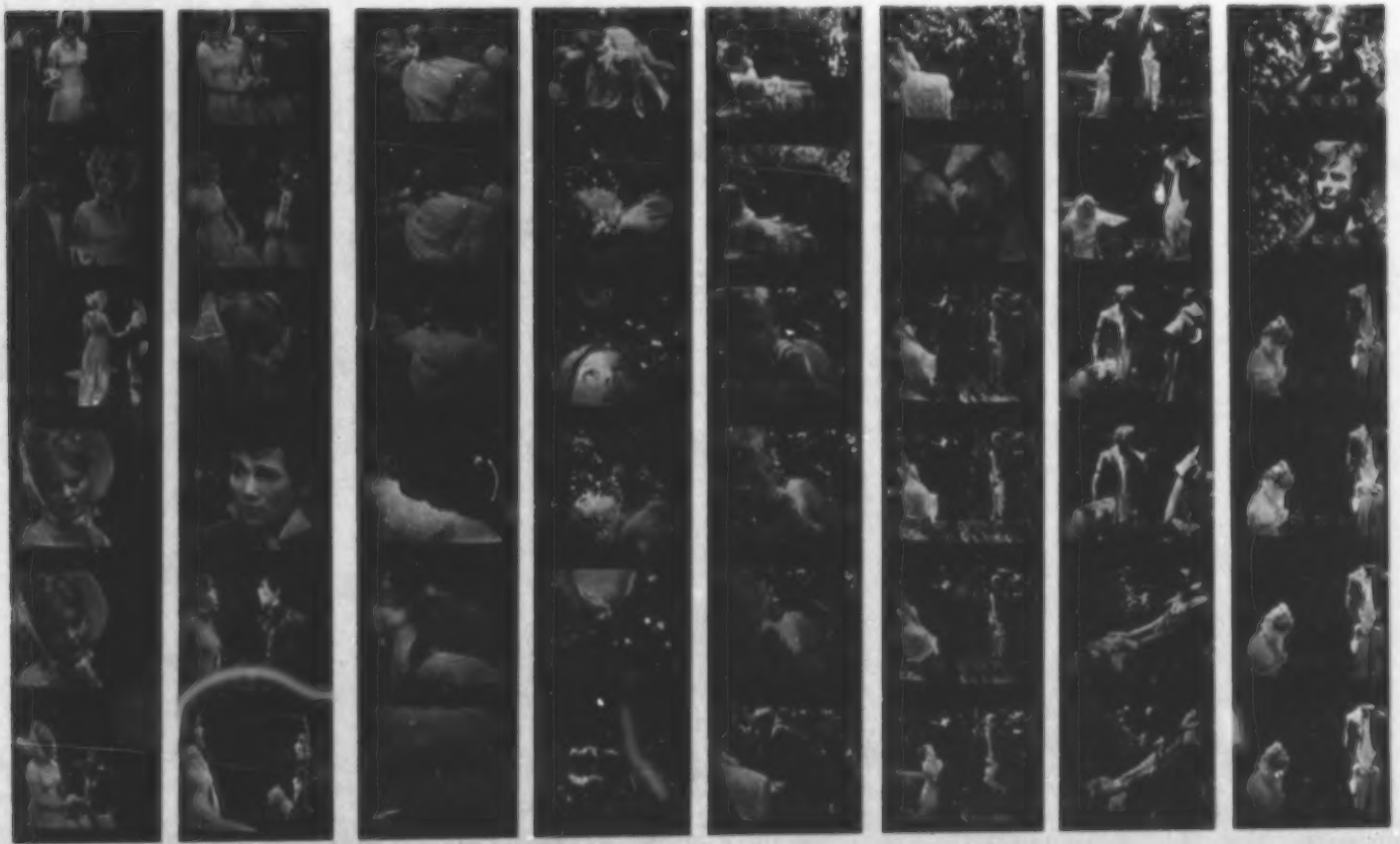
* A time-motion study is a chronological series of still photographs of a motion picture film, timed in their relative order of appearance, which, by "stopping" the movement appearing on the motion picture screen and recording the same, permits the type of conduct being portrayed thereon to be analyzed in a fair and accurate manner. Photographs have been taken every 3.6 seconds playing time.

"THE AUTOBIOGRAPHY OF A FLEA": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 46834) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO MOOKS, INC. (DATE OF ISSUANCE: OCT. 12, 1976).



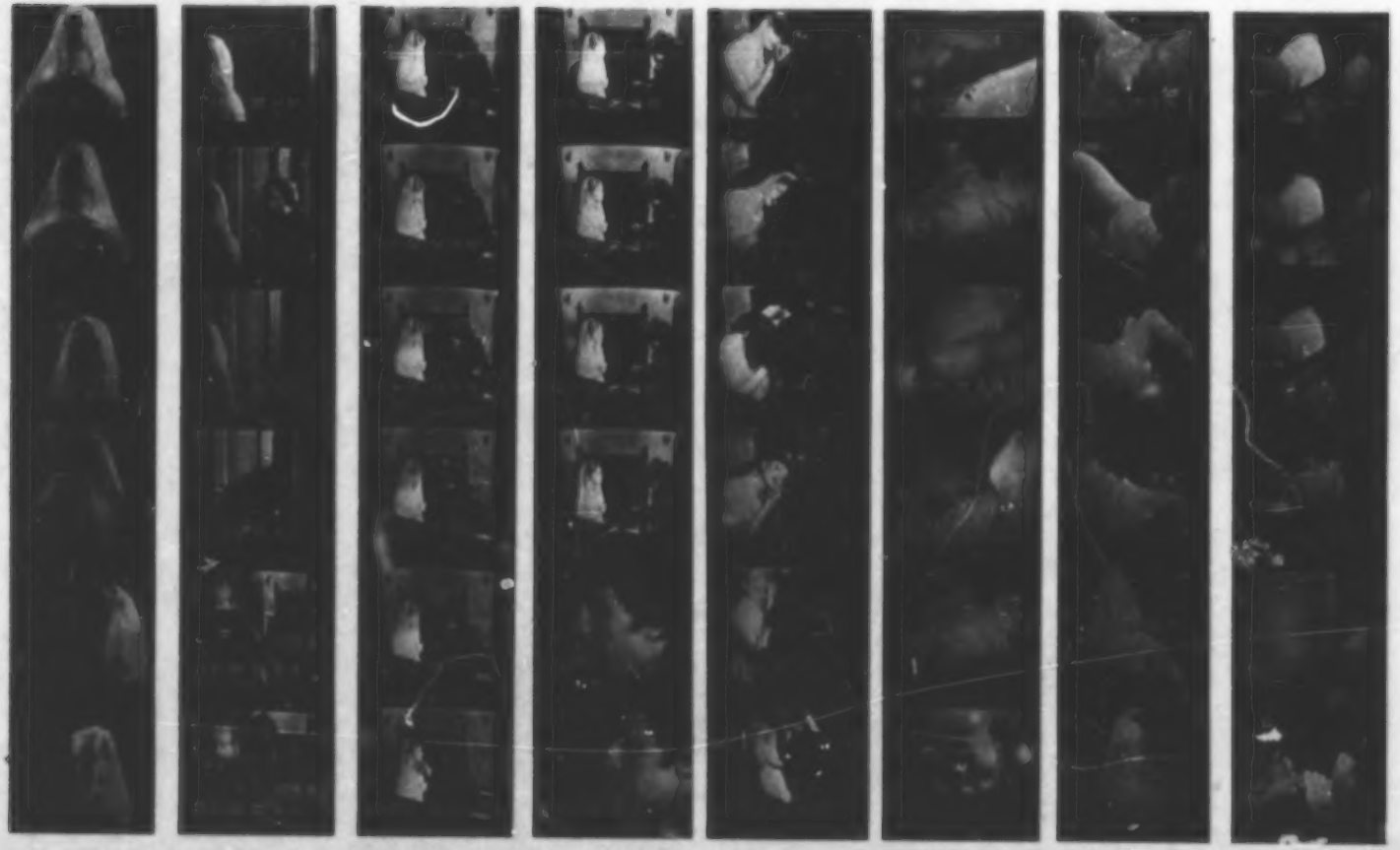
"THE AUTOBIOGRAPHY OF A FLEA"
PART 1 OF 17 PARTS
(00:05-01:22) PRESENT THE TITLE AND A SHORT INTRODUCTION. AN UNSEEN FLEA NARRATES ON AND OFF THROUGHOUT THE FILM. THE FLEA HAS MADE HIS HOME IN THE VAGINA OF A 14 YEAR OLD GIRL. THE SETTING IS IN OLD FRANCE AROUND THE SEVENTEEN HUNDRED'S. (01:26-04:37) DEPICT THE 14 YEAR OLD EXAMINING HER BODY. THE NARRATOR FLEA INDICATES THAT THE FEMALE IS A VIRGIN. (04:41-05:32) DEPICT THE 14 YEAR OLD FEMALE AND THE MOTHER IN CHURCH AND A YOUNG MALE SITTING IN A PEW. THEN SCENE SHIFTS OUTSIDE.

"THE AUTOBIOGRAPHY OF A FLEA": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 46834) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO MOOKS, INC. (DATE OF ISSUANCE: OCT. 12, 1976).



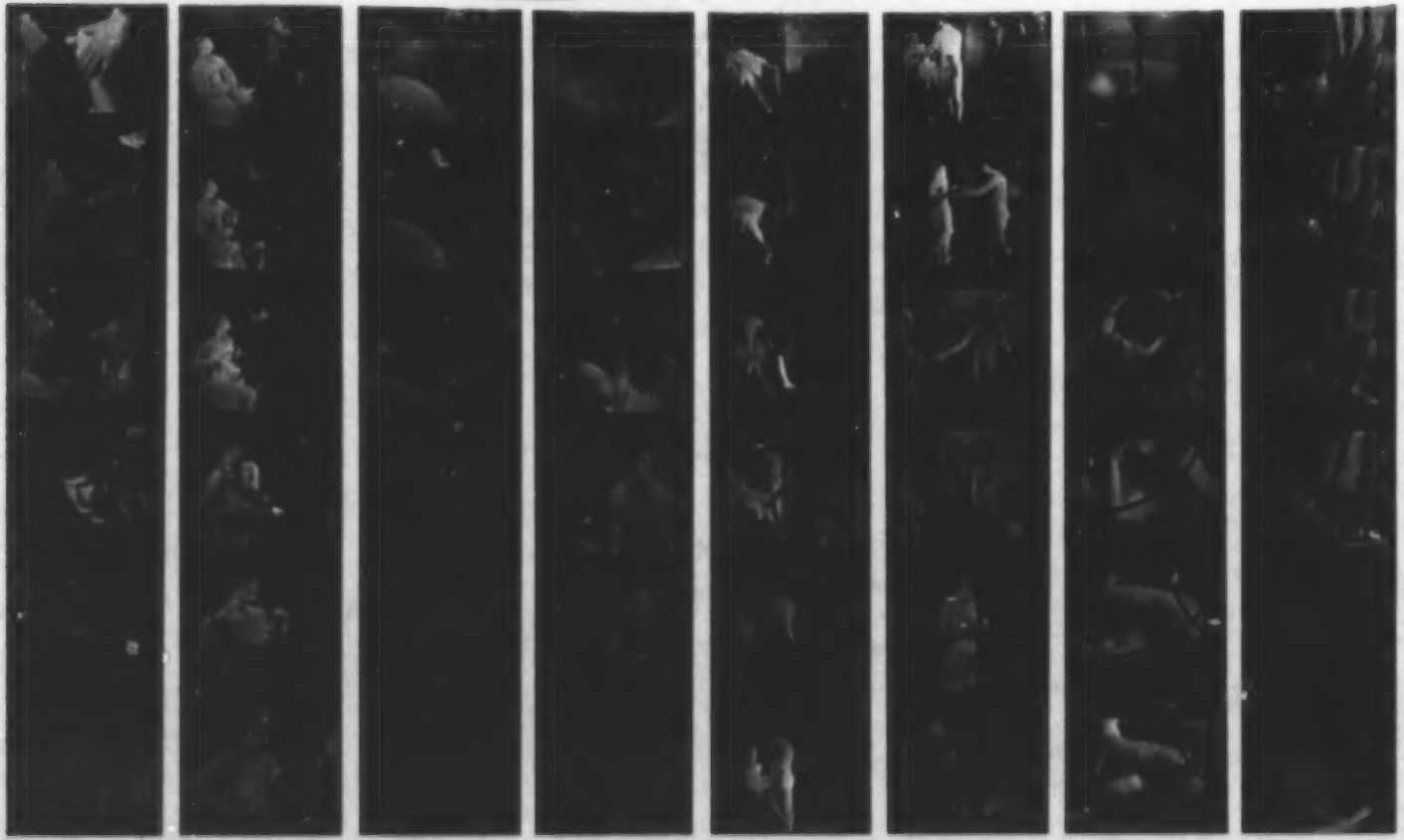
"THE AUTOBIOGRAPHY OF A FLEA"
PART 2 OF 17 PARTS
(05:40-06:53) DEPICT THE YOUNG GIRL AND THE MOTHER LEAVING CHURCH AND THE YOUNG MAN PASSING HER A NOTE WHICH SAID MEET HER IN THE GARDEN. THE YOUNG MALE AND FEMALE ARE IN THE GARDEN. (06:57-08:10) THEY ENGAGE IN AN ACT OF SEXUAL INTERCOURSE ON A BENCH. THE MARRATOR INDICATES THAT THIS IS THE FIRST EXPERIENCE FOR BOTH. (08:14-10:22) A MONK HIDING IN THE BUSHES CATCHES THE PAIR AND CHASTIZES THEM. (10:26-10:54) THE MONK TELLS THE YOUNG FEMALE THAT SHE MUST VISIT HIS QUARTERS WHERE HE WILL ASSIST HER IN GETTING RID OF THIS PARTICULAR SIN. (10:57-11:11) DEPICT THE FEMALE VISITING THE MONK'S QUARTERS.

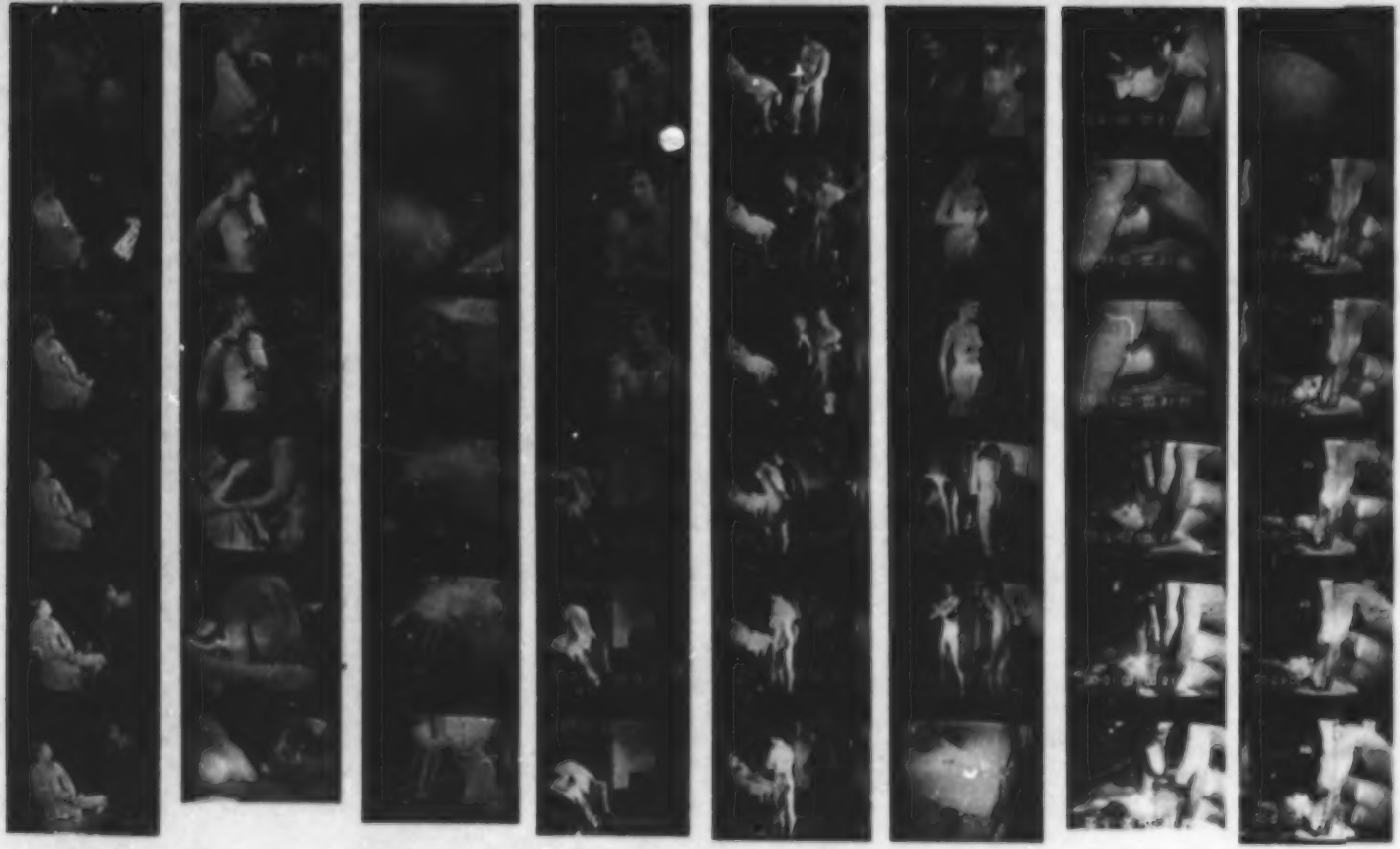
"THE AUTOBIOGRAPHY OF A FLEA": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 46834) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO MOOKS, INC. (DATE OF ISSUANCE: OCT. 12, 1976).



"THE AUTOBIOGRAPHY OF A FLEA"
PART 3 OF 17 PARTS
(11:15-13:48) THE MONK TELLS HER SHE MUST DO EVERYTHING HE SAYS SO SHE WILL BE SAVED. (13:52-13:55) HE KISSES THE 14 YEAR OLD FEMALE. (13:59-15:33) THE MONK ENGAGING IN CUNNILINGUS WITH THE YOUNG FEMALE, LYING ACROSS THE TABLE. (15:36-16:23) THE MONK TELLS THE YOUNG FEMALE THAT SHE CAN MASTURBATE HIM (NOT IN THOSE PARTICULAR TERMS) SHE BEGINS TO MASTURBATE THE MONK'S PENIS. (16:25-16:46) THE YOUNG FEMALE FELLATES THE MONK.

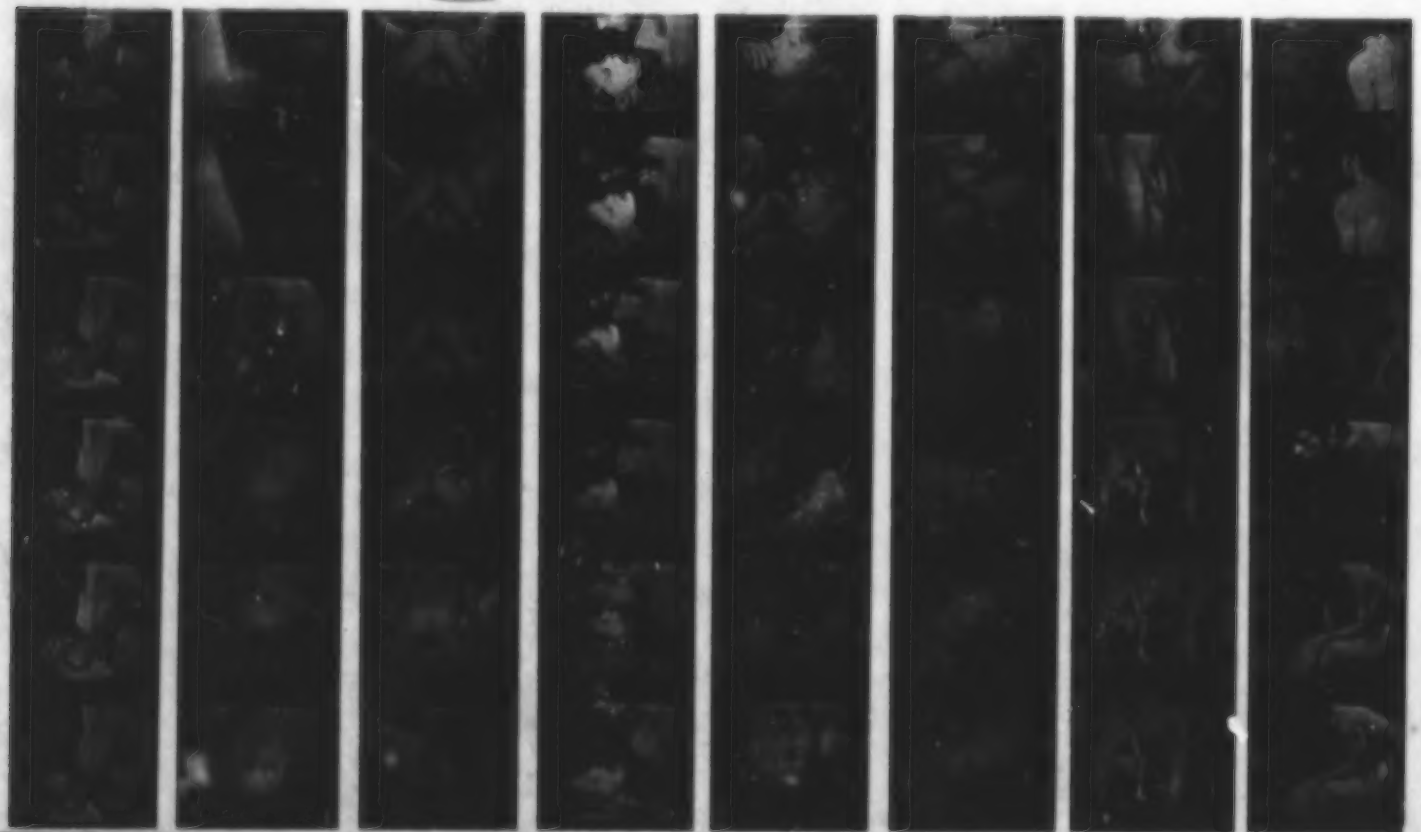
"THE AUTOBIOGRAPHY OF A FLEA": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 46834) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO HOOKS, INC. (DATE OF ISSUANCE: OCT. 12, 1976).





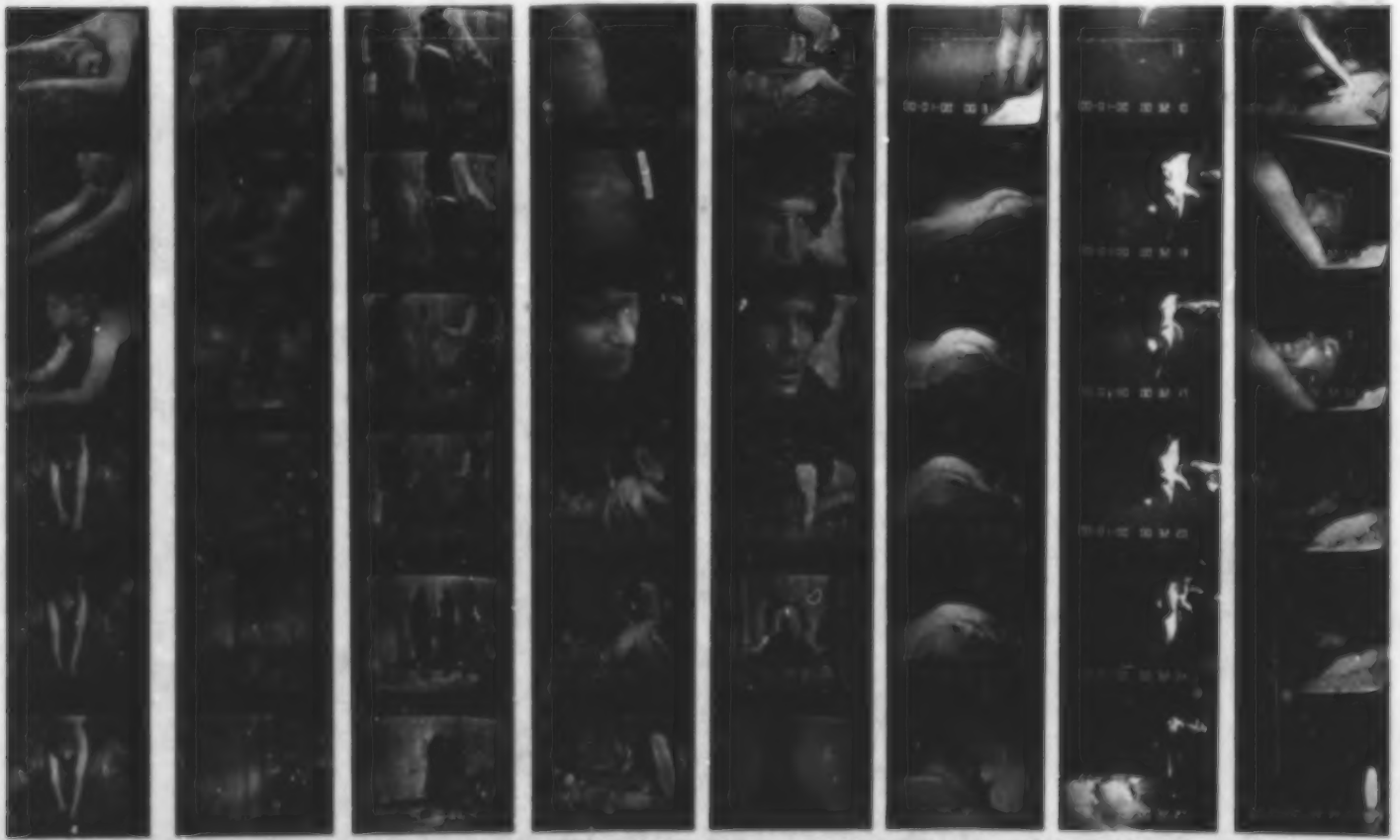
"THE AUTOBIOGRAPHY OF A FLEA"
PART 4 OF 17 PARTS
(16:49-17:10) FELLATIO CONTINUES. (17:14-18:03) THE YOUNG FEMALE DISROBES. (18:06-19:54) THE MONK ENGAGES IN SEXUAL INTERCOURSE WITH THE YOUNG FEMALE. (19:58-21:07) TWO OTHER MONKS ENTER SAYING "MMM--" ONE OF THE MONKS IS JOHN HOLMES. (21:11-22:21) ANOTHER MONK ENGAGES IN SEXUAL INTERCOURSE WITH THE FEMALE ON THE FLOOR

"THE AUTOBIOGRAPHY OF A FLEA": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 46834) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO MOOKS, INC. (DATE OF ISSUANCE: OCT. 12, 1976).



"THE AUTOBIOGRAPHY OF A FLEA"
PART 5 OF 17 PARTS
(22:24-24:57) THE SAME MONK CONTINUES TO ENGAGE IN SEXUAL INTERCOURSE WITH THE FEMALE ON THE FLOOR. (25:01-26:31) THE OTHER MONK, WHO IS ACTOR JOHN HOLMES, APPROACHES THE FEMALE AND ENGAGES IN SEXUAL INTERCOURSE WITH HER. (26:35-27:45) THE TWO MONKS, STANDING NUDE, TALK TO EACH OTHER ABOUT THE OCCURRENCE. ONE MONK TELLS THE FEMALE THAT SHE MUST DO OTHER THINGS. (27:48-27:55) THE FEMALE TURNS AND GOES ON HER KNEES ON THE FLOOR WHILE THE OTHER MONK ENGAGES IN SODOMY WITH HER.

"THE AUTOBIOGRAPHY OF A FLEA": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 46834) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO MOOKS, INC. (DATE OF ISSUANCE: OCT. 12, 1976).



"THE AUTOBIOGRAPHY OF A FLEA"
PART 6 OF 17 PARTS
(27:59-28:51) SODOMY CONTINUES. MONKS DISCUSS FEMALE. (28:54-29:40) SCENE SHIFTS TO THE SAME FEMALE IN A ROOM WITH ONE OF THE MONKS AND HER UNCLE. (29:43-31:03) THE UNCLE DECIDES HE WILL HAVE INTERCOURSE WITH HIS NIECE, THE 14 YEAR OLD FEMALE. THE MONK HELPS THE UNCLE HOLD HER WHILE HE ATTEMPTS TO ENGAGE IN SEXUAL INTERCOURSE. (31:07-31:17) THIS POINT THE FLEA BITES THE PENIS OF THE UNCLE WHICH STOPS THE ACTIVITY. THE FEMALE RUNS OUT OF THE ROOM. (31:21-33:30) THE NIECE IS SLEEPING. THE UNCLE COMES INTO THE BEDROOM AND PULLS THE COVERS BACK EXPOSING HER NUDE BODY. SHE THEN RAPES HIM (SUPPOSEDLY) ON THE BED, AND ENGAGES IN SEXUAL INTERCOURSE WITH THE FEMALE SUPERIOR.

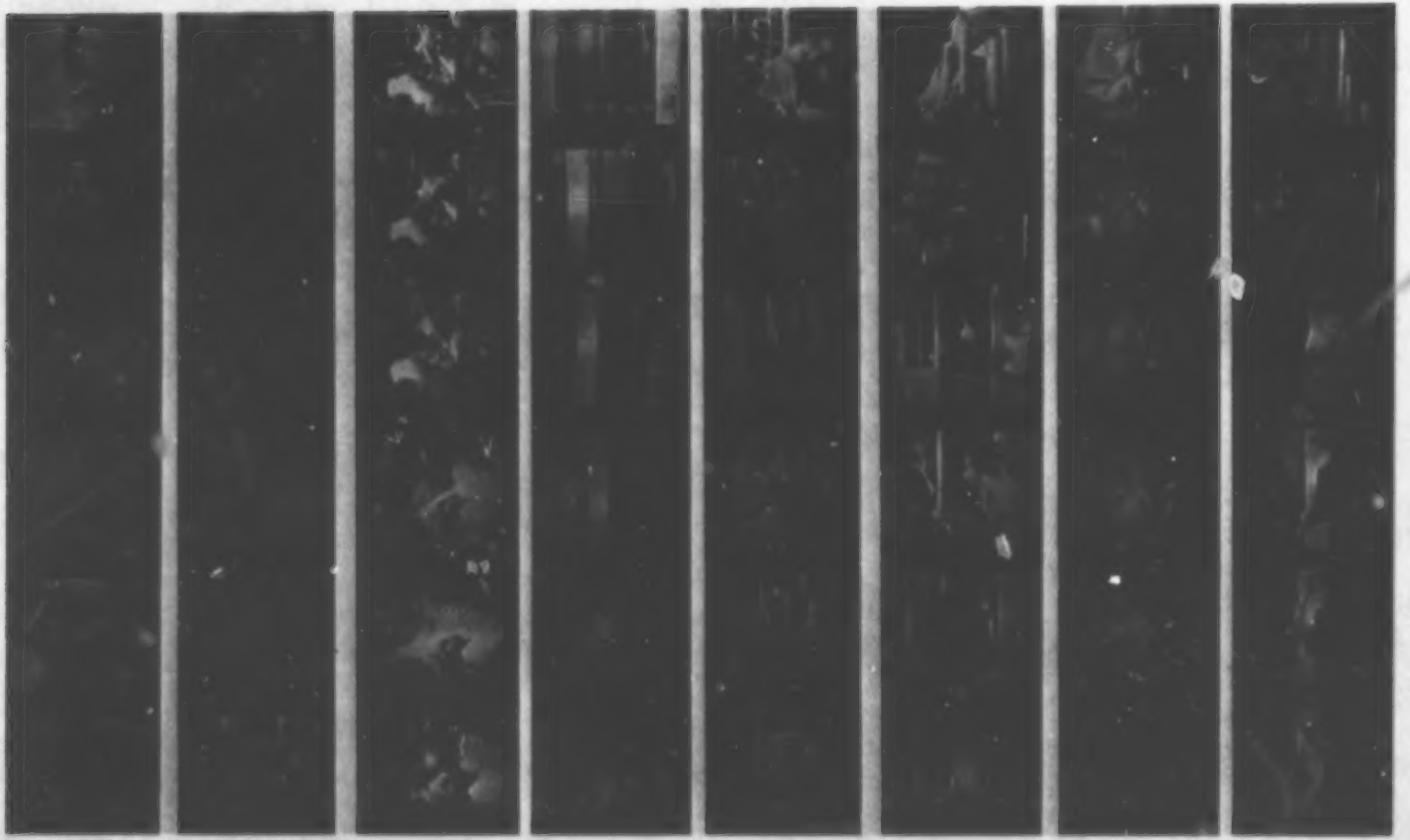
"THE AUTOBIOGRAPHY OF A FLEA": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 46834) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO MOOKS, INC. (DATE OF ISSUANCE: OCT. 12, 1976).

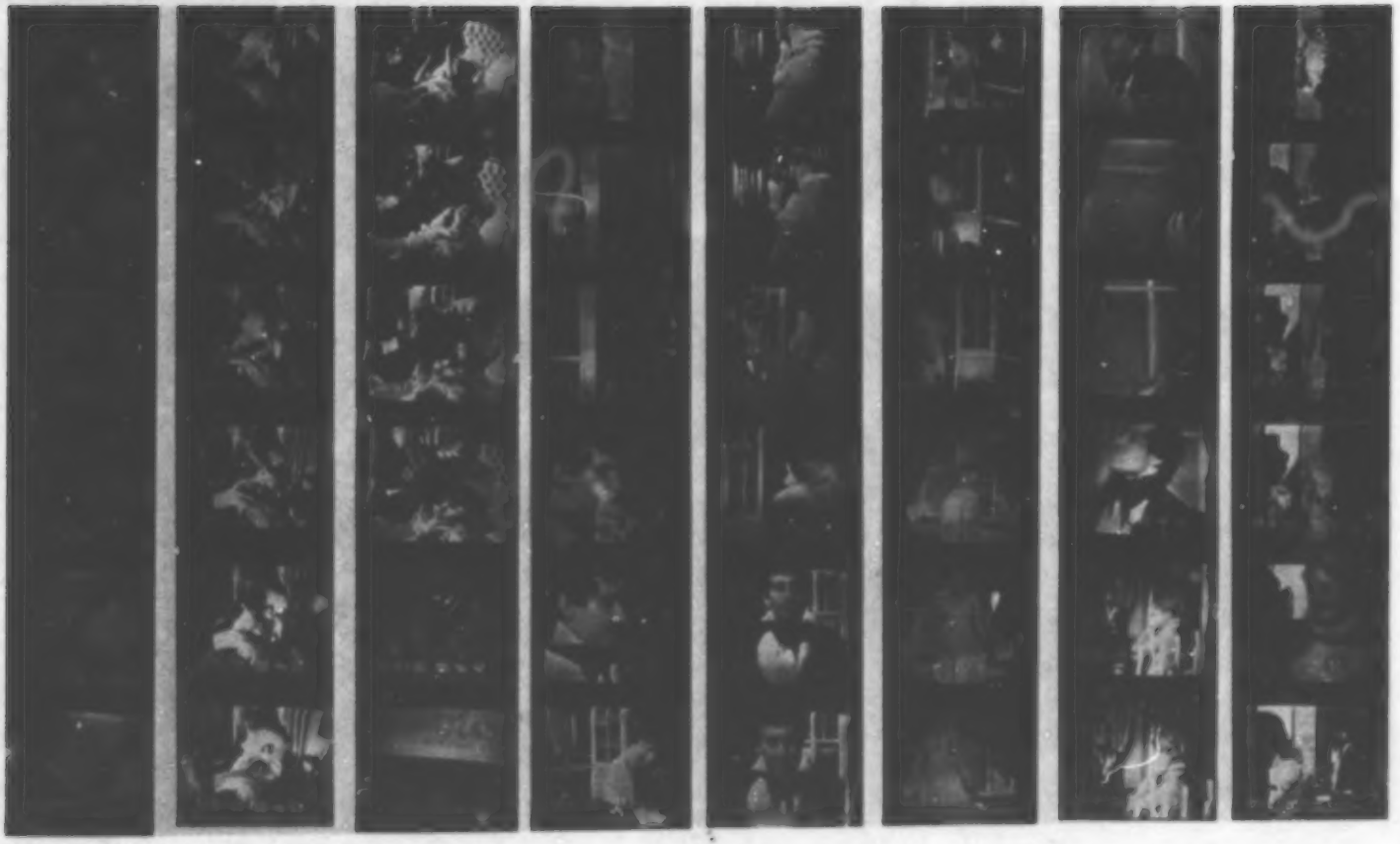
"THE AUTOBIOGRAPHY OF A FLEA"
PART 7 OF 17 PARTS
(33:33-33:40) INTERCOURSE CONTINUES. (33:44-34:05) THE OUTDOOR SCENE SHOWING TWO YOUNG FEMALES TALKING. ONE OF THE FEMALES IS THE 14 YEAR OLD GIRL, THE OTHER GIRL IS HER FRIEND, WHO IS ALSO SUPPOSEDLY A TEENAGER. (34:09-35:49) THE FRIEND'S FATHER JOINS THEM IN DANCING AND PLAYING ON A LAWN. (35:53-38:47) THE SCENE SHIFTS TO THE ORIGINAL 14 YEAR OLD IN THE NUDE WITH HER UNCLE AND A MONK DRINKING CHAMPAGNE WITH STRAWBERRIES. THEY ARE TALKING ABOUT A PLAN TO TRICK THE FATHER OF THE OTHER YOUNG GIRL INTO HAVING SEX WITH HIS DAUGHTER WITHOUT HIM KNOWING IT. (38:51-39:05) DEPICTS THE WIFE OF THE UNCLE OF THE FIRST YOUNG GIRL SITTING IN THE BEDROOM, DRINKING COFFEE OR COCOA, AND PREPARING TO GO TO BED.

"THE AUTOBIOGRAPHY OF A FLEA": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 46834) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO MOOKS, INC. (DATE OF ISSUANCE: OCT. 12, 1976).

"THE AUTOBIOGRAPHY OF A FLEA"
PART 8 OF 17 PARTS
(39:09-41:56) SHE GETS IN BED AS "MONK" JOHN HOLMES CLIMBS UP THE BALCONY IN SEARCH OF THE 14 YEAR OLD DAUGHTER BUT UNWITTINGLY CLIMBS INTO THE BEDROOM OF THE WIFE OF THE GIRL'S UNCLE. (41:59-44:40) HE GETS INTO BED WITH HER AND PERFORMS CUNNILINGUS ON HER AND SEXUAL INTERCOURSE.

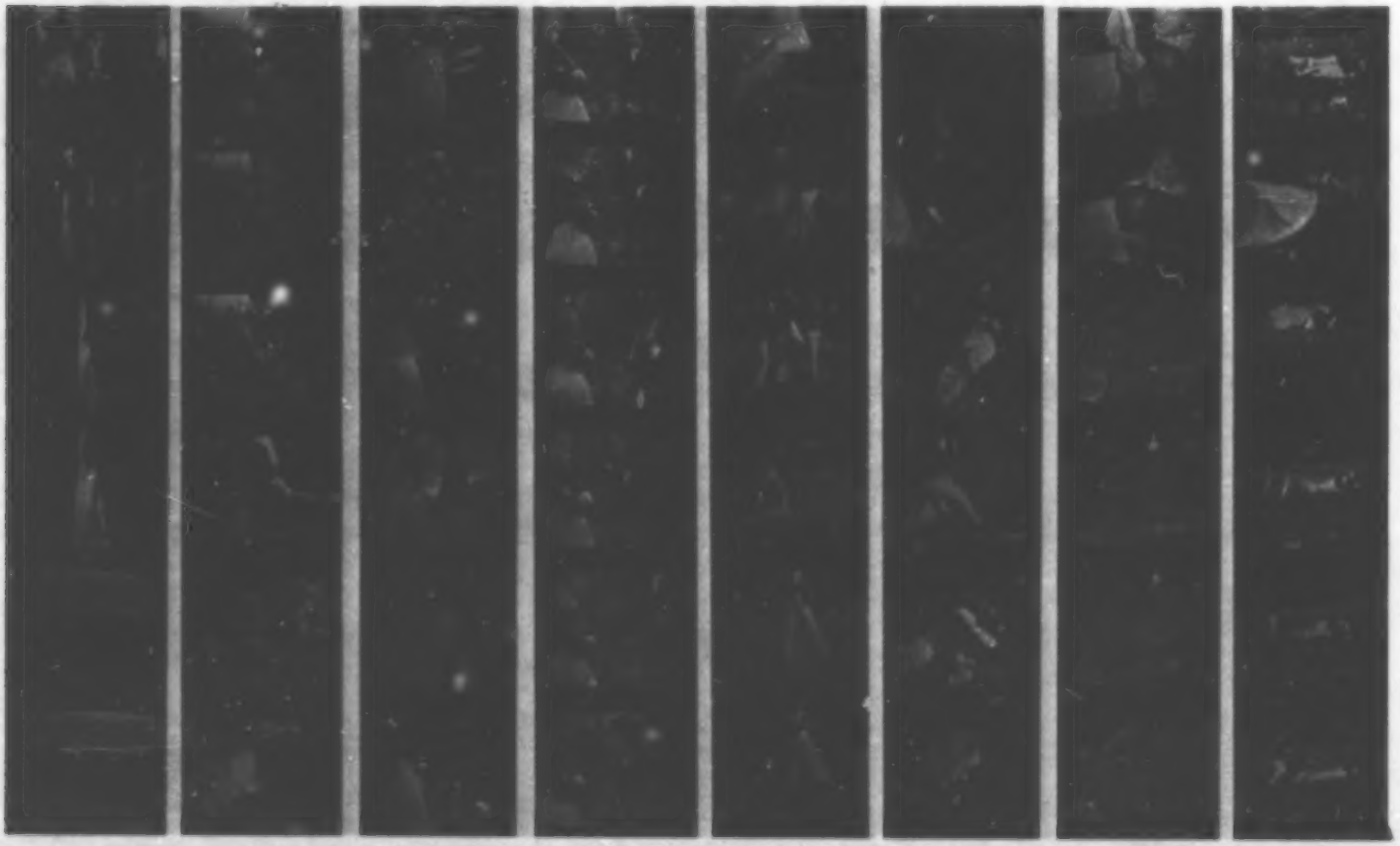
"THE AUTOBIOGRAPHY OF A FLEA": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 46834) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO MOOKS, INC. (DATE OF ISSUANCE: OCT. 12, 1976).

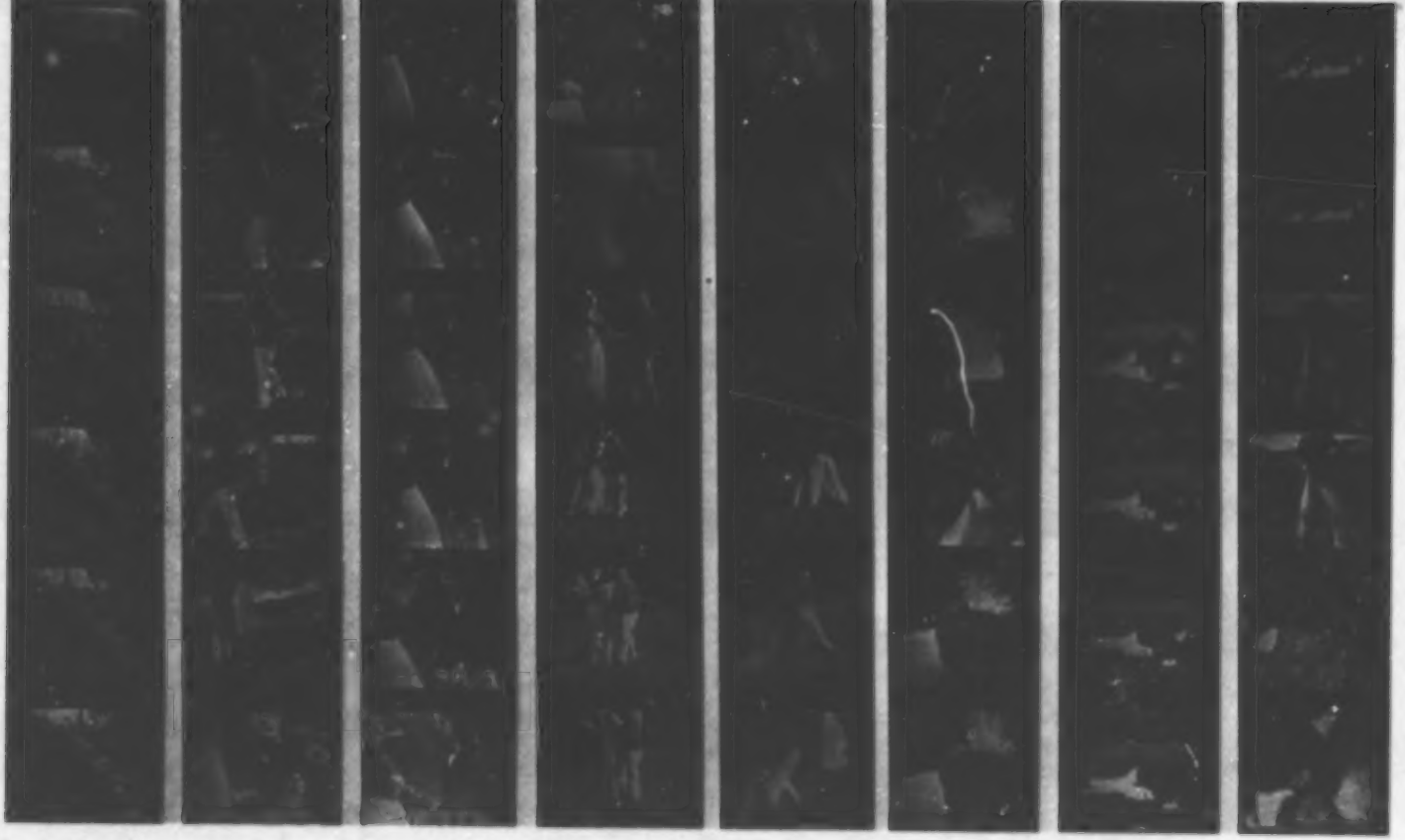




"THE AUTOBIOGRAPHY OF A FLEA"
PART 9 OF 17 PARTS
(44:43-46:00) HE ENGAGES IN SEXUAL INTERCOURSE WITH HER. (46:03-46:21) THE HUSBAND (UNCLE) OF THE WOMAN ENTERS AND CHASES JOHN HOLMES AROUND THE BED. JOHN HOLMES JUMPS OUT THE WINDOW. (46:24-46:42) THE UNCLE RETURNS TO HIS WIFE'S BEDSIDE. (46:45-50:14) SCENE SHIFTS TO THE SECOND YOUNG GIRL'S HOUSE WHERE THE FIRST GIRL MEETS THE FATHER OF HER GIRLFRIEND, THEY FLIRT AND TALK.

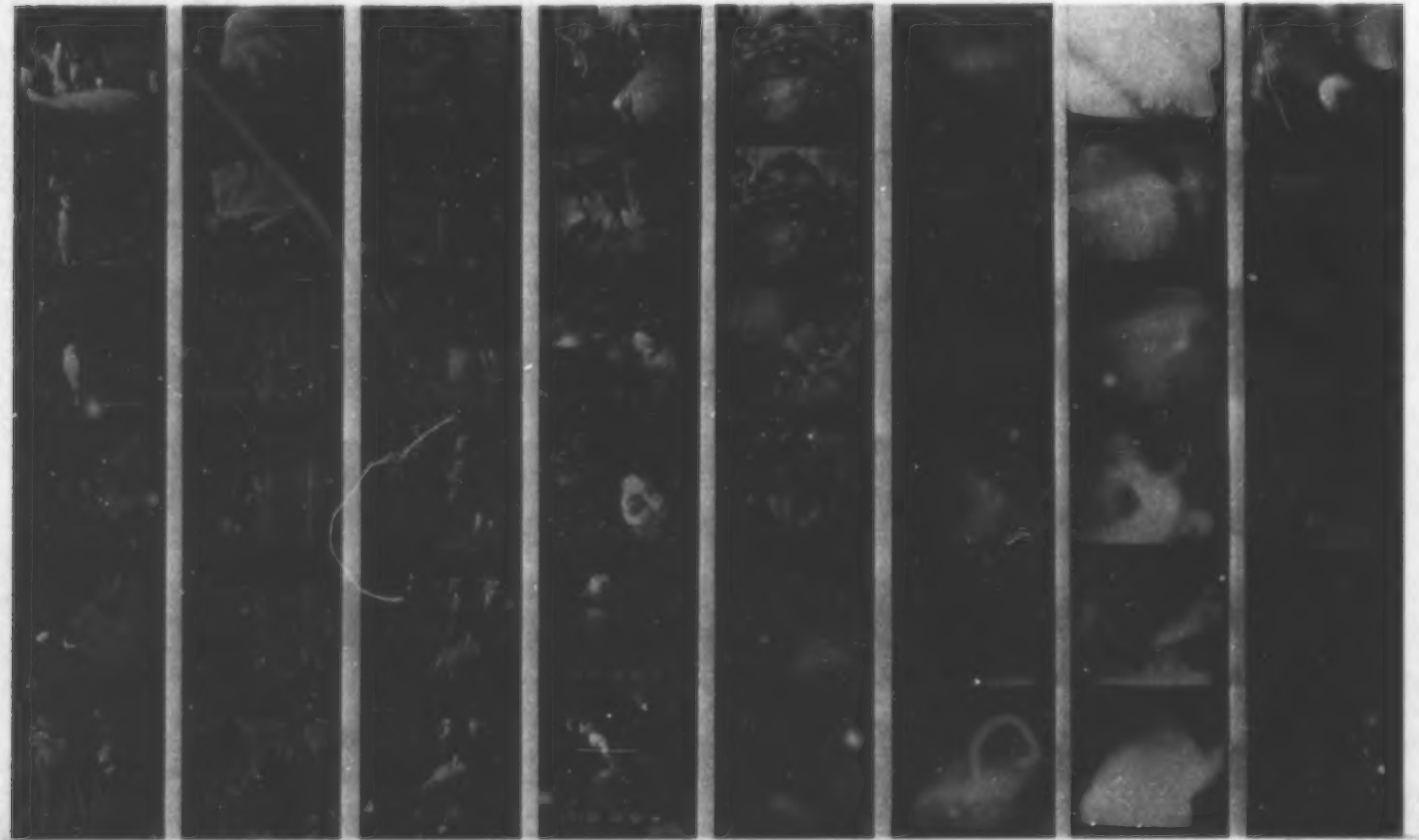
"THE AUTOBIOGRAPHY OF A FLEA": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 46834) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO MOOKS, INC. (DATE OF ISSUANCE: OCT. 12, 1976).

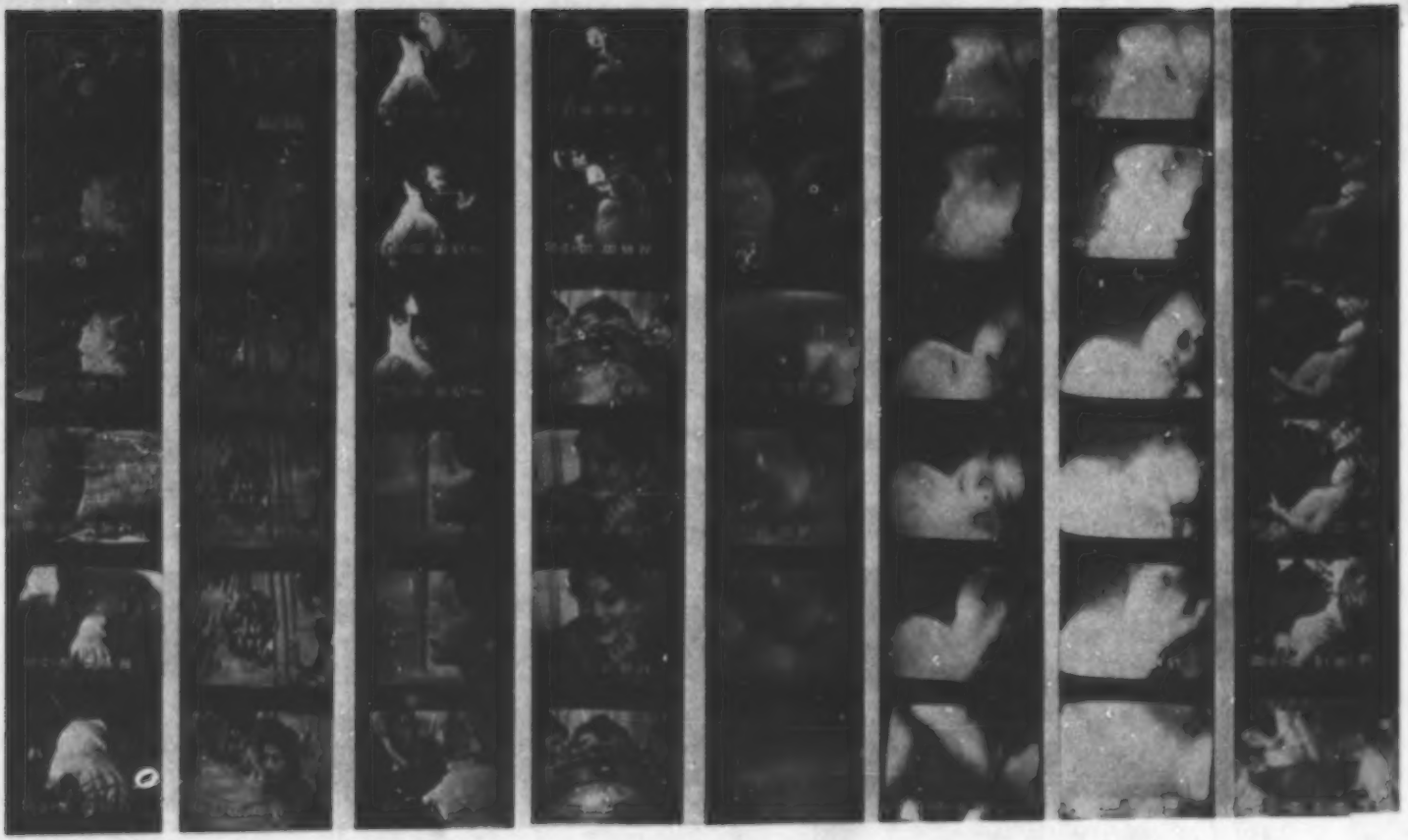




"THE AUTOBIOGRAPHY OF A FLEA"
PART 10 OF 17 PARTS
(50:18-50:28) IS THE ENDING OF THE MEETING BETWEEN THE YOUNG GIRL'S FATHER AND HER GIRLFRIEND. (50:32-51:07) AN OUTDOOR SCENE SHOWING THE 14 YEAR OLD GIRL WALKING IN A FIELD. (51:10-51:35) DEPICT HER LOOKING ON A BANK AND SEEING A MALE MASTURBATE. THE MALE SEES HER AND PULLS HIS PANTS UP. (51:38-52:51) HE TALKS TO HER AND TELLS HER HE WOULD LIKE TO HAVE INTERCOURSE WITH HER USING THE WORD "FUCK." (52:55-55:49) SHE BEGINS TO HAVE SEXUAL INTERCOURSE WITH HIM ON THE GRASS AS THE YOUNG MAN'S FATHER ENTERS THE SCENE AND URGES HIM ON.

"THE AUTOBIOGRAPHY OF A FLEA": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 46834) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO MOOKS, INC. (DATE OF ISSUANCE: OCT. 12, 1976).



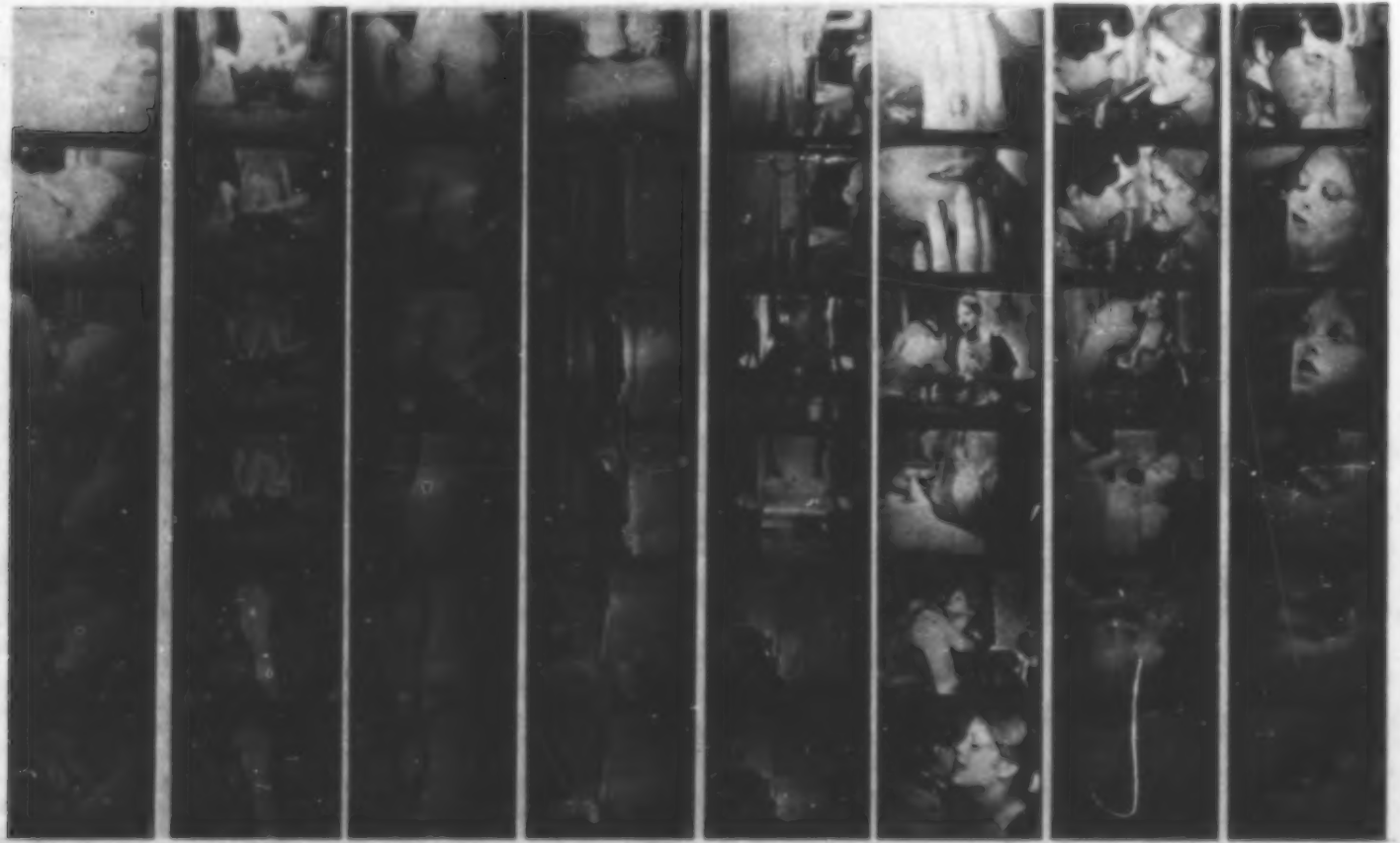


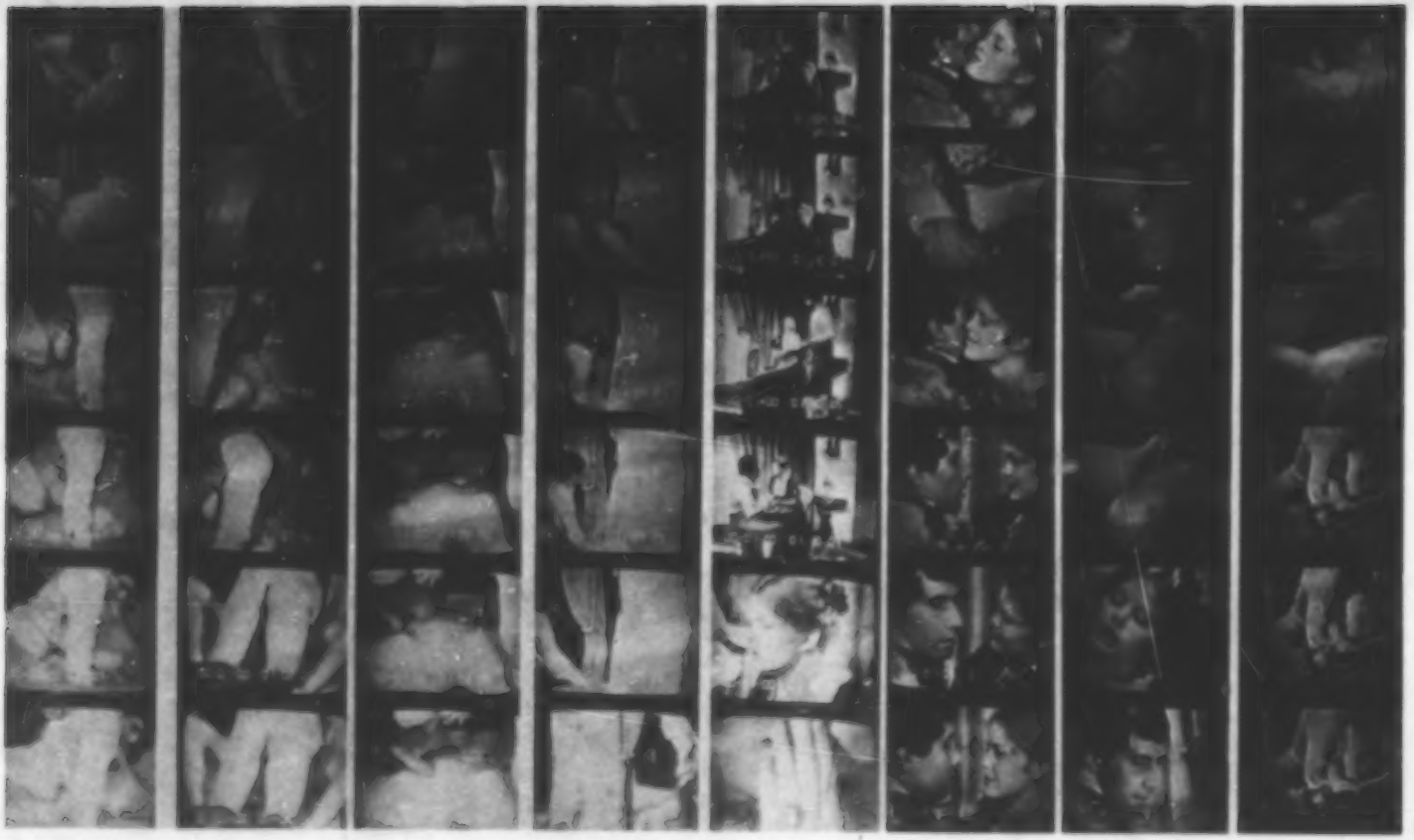
"THE AUTOBIOGRAPHY OF A FLEA"
PART 11 OF 17 PARTS
(55:53-56:38) THE INTERCOURSE BETWEEN THE SON AND THE FEMALE ON THE GRASS CONTINUES WHILE THE FATHER URGES THE SON ON. (56:41-60:42) THE SCENE SHIFTS TO THE YOUNG 14 YEAR OLD FEMALE AND HER GIRLFRIEND TALKING ABOUT SEX. FLASHBACK SCENES OF GIRLFRIEND AND ONE OF THE MONKS TOGETHER.

"THE AUTOBIOGRAPHY OF A FLEA": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 46834) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO MOOKS, INC. (DATE OF ISSUANCE: OCT. 12, 1976).

"THE AUTOBIOGRAPHY OF A FLEA"
PART 12 OF 17 PARTS
(60:46-61:52) FLASHBACK SCENES OF GIRLFRIEND AND MONK. THEY DEPICT FURTHER CONVERSATION BETWEEN THE TWO GIRLS. THE 14 YEAR OLD TELLING THE GIRLFRIEND THAT SHE SHOULD HAVE SEX. (61:56-62:51) UNCLE'S HOUSE. THEY HAVE ARRANGED FOR THE FATHER OF THE GIRL TO HAVE SEX WITH THE GIRL. HE DOES NOT REALIZE IT WILL BE HIS DAUGHTER. (62:55-64:23) DEPICTS THE DAUGHTER LYING ON A BED WITH HER HEAD COVERED. THE FATHER ENTERS THE ROOM AND BEGINS TO MASTURBATE HIS DAUGHTER NOT REALIZING THAT IT IS HIS DAUGHTER. (64:27-66:10) DEPICTS THE FATHER STILL MASTURBATING HIS DAUGHTER, HER HEAD IS COVERED. HE DISROBES AND ENGAGES IN SEXUAL INTERCOURSE WITH HER. (66:13-66:35) 14 YEAR OLD FEMALE IS WATCHING FROM BEHIND CURTAIN.

"THE AUTOBIOGRAPHY OF A FLEA": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 46834) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO MOOKS, INC. (DATE OF ISSUANCE: OCT. 12, 1976).



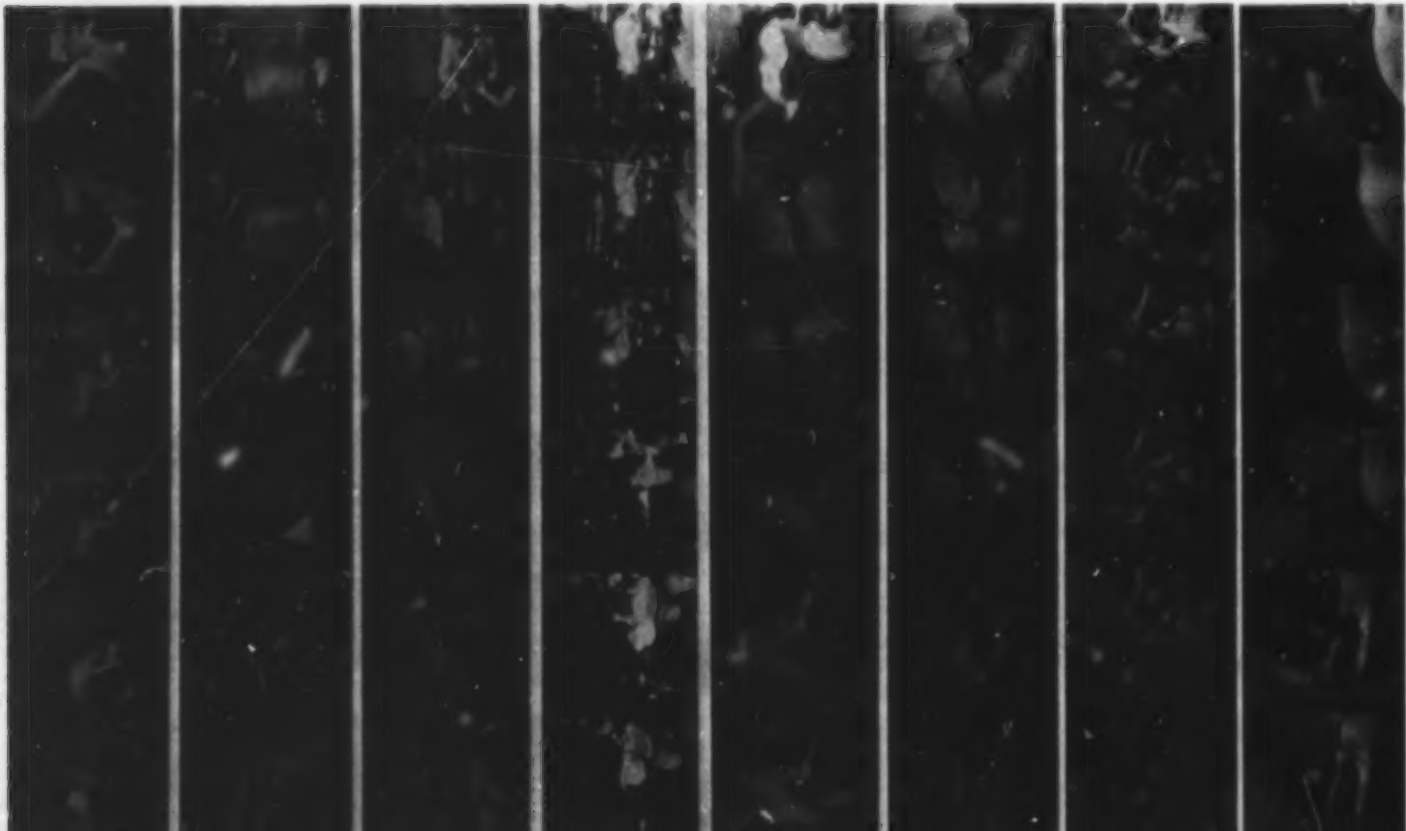


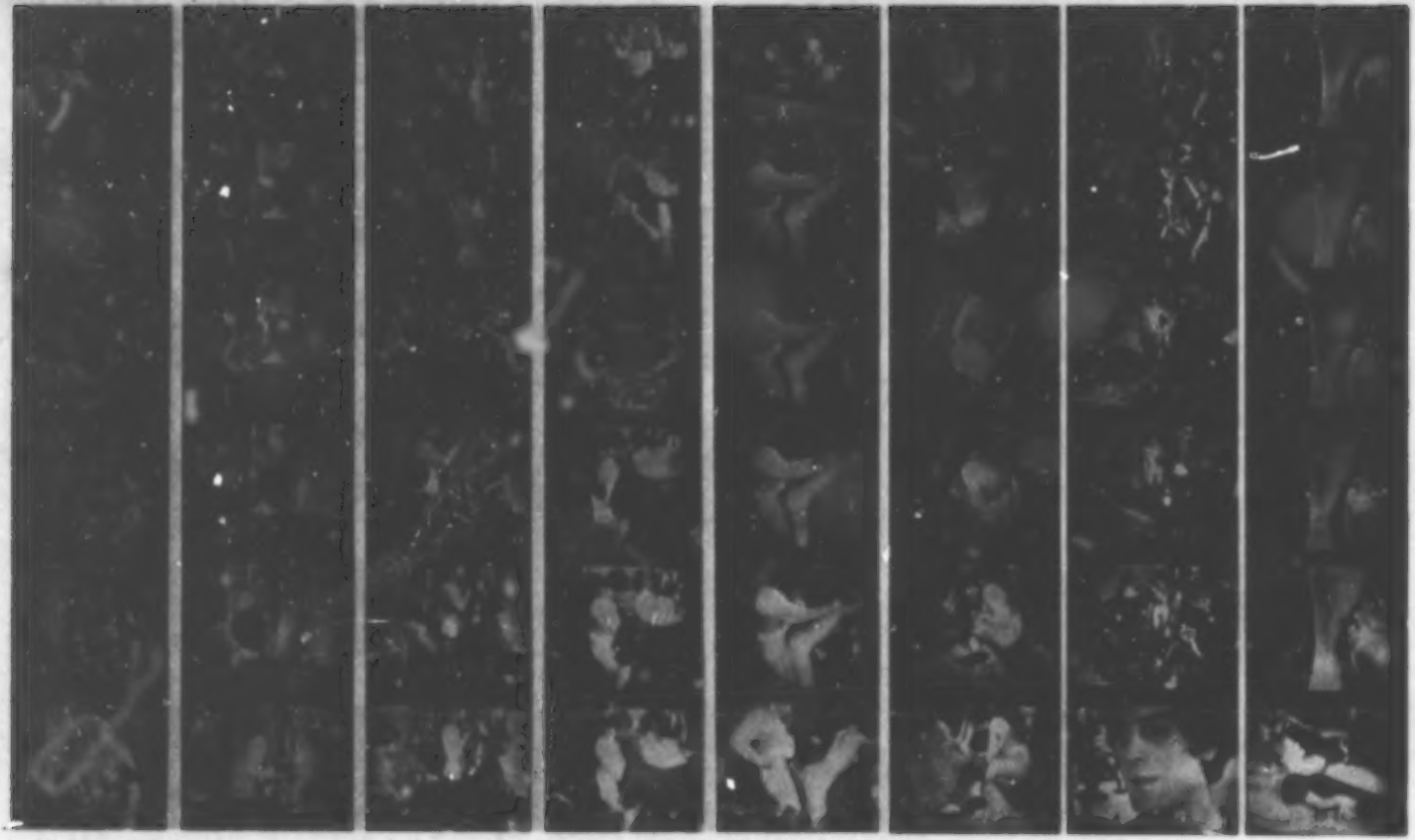
"THE AUTOBIOGRAPHY OF A FLEA"
PART 13 OF 17 PARTS
(66:39-68:51) THE FATHER CONTINUES TO ENGAGE IN SEXUAL INTERCOURSE WITH HIS DAUGHTER. HE REMOVES HIS PENIS FROM HER VAGINA AND EJACULATES ON HER STOMACH. (68:55-69:47) MALE LOOKS UP TO SEE 14 YEAR OLD FEMALE WATCHING. SHE LEAVES AND HE FOLLOWS. (69:50-70:27) SHE THEN MEETS THE FATHER IN ANOTHER ROOM, TELLS HIM HE WAS ENGAGING IN INTERCOURSE WITH HIS DAUGHTER. (70:31-72:28) FEMALE CONTINUES TO TALK ABOUT HOW THE FATHER ENGAGED IN INTERCOURSE WITH HIS OWN DAUGHTER. HE THEN ENGAGES IN INTERCOURSE WITH THE 14 YEAR OLD FEMALE.

"THE AUTOBIOGRAPHY OF A FLEA": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 46834) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO MOOKS, INC. (DATE OF ISSUANCE: OCT. 12, 1976).

"THE AUTOBIOGRAPHY OF A FLEA"
PART 14 OF 17 PARTS
(72:32-74:44) THE FATHER OF THE GIRL CONTINUES TO HAVE SEXUAL INTERCOURSE WITH THE 14 YEAR OLD FEMALE. (74:48-76:27) THE UNCLE AND THE MONK BRING THE DAUGHTER OF THE MAN, LIE HER ON THE FLOOR. (76:31-78:21) THE MONK THEN BEGINS TO HAVE INTERCOURSE WITH HER WHILE HER FATHER WATCHES AND MASTURBATES.

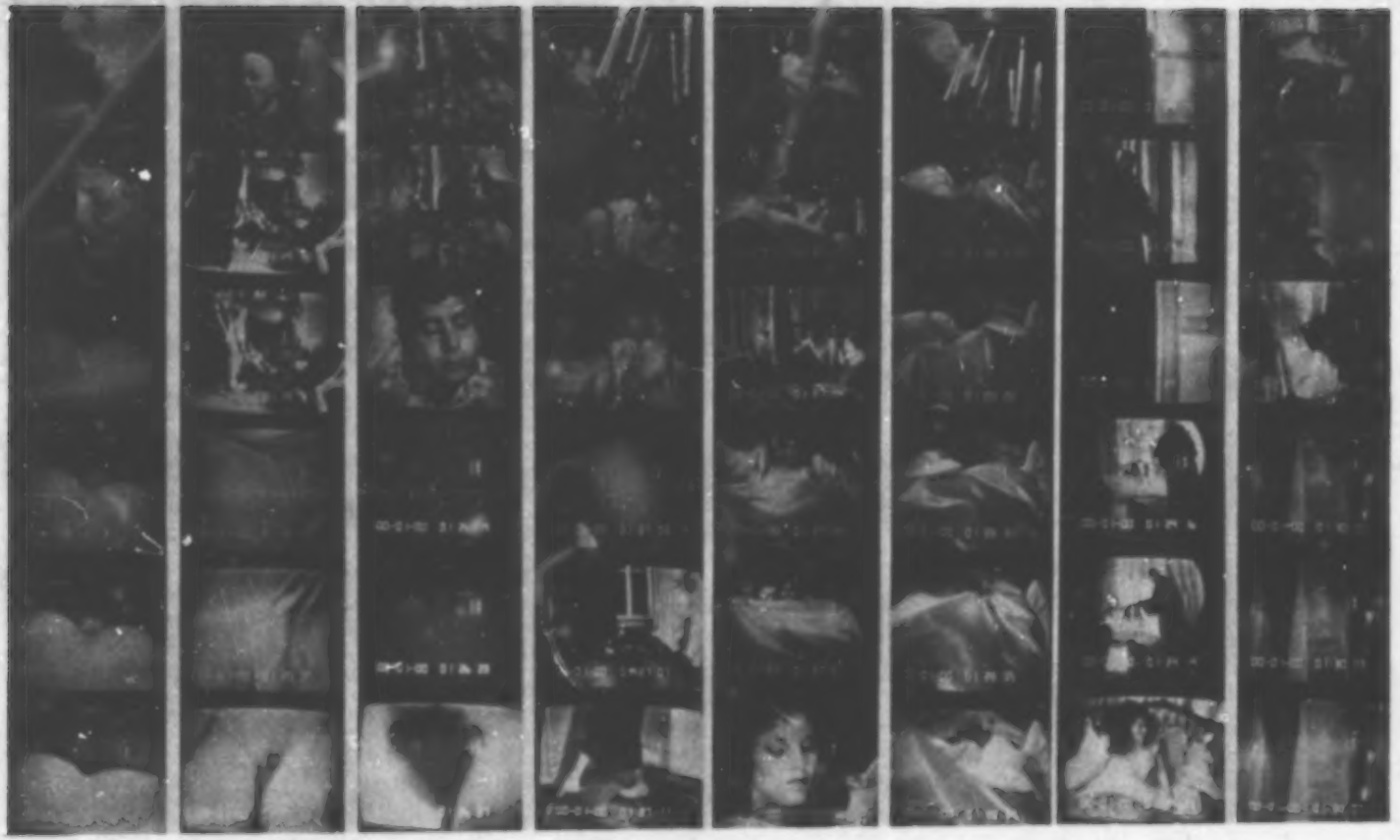
"THE AUTOBIOGRAPHY OF A FLEA": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 46834) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO MOOKS, INC. (DATE OF ISSUANCE: OCT. 12, 1976).





"THE AUTOBIOGRAPHY OF A FLEA"
PART 15 OF 17 PARTS
(78:25-78:43) THE FATHER CONTINUES TO MASTURBATE WHILE HE WATCHES HIS DAUGHTER ENGAGING IN SEXUAL INTERCOURSE WITH THE MONK. (78:47-79:28) THE 14 YEAR OLD ENGAGES IN SEXUAL INTERCOURSE WITH HER UNCLE IN THE SAME ROOM. (79:31-80:48) ACTIVITY CONTINUES. (80:52-82:17) DEPICTS THE FATHER ENGAGING IN SEXUAL INTERCOURSE WITH HIS DAUGHTER AND HE NOW KNOWS IT IS HIS DAUGHTER. THEY ENGAGE IN SEXUAL INTERCOURSE WHILE SHE LEANS AGAINST THE FIREPLACE. SEXUAL INTERCOURSE IS FROM THE REAR POSITION. (82:20-83:08) THE FATHER HAS A HEART ATTACK AND KEELS OVER. HE FALLS ON THE FLOOR AND THE OTHER PEOPLE IN THE ROOM DON'T REALIZE HE IS DEAD. (83:12-84:14) THE FATHER LIES DEAD ON THE FLOOR WHILE THE OTHER PEOPLE ENGAGE IN SEXUAL INTERCOURSE.

"THE AUTOBIOGRAPHY OF A FLEA": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 46834) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO MOOKS, INC. (DATE OF ISSUANCE: OCT. 12, '976).



"THE AUTOBIOGRAPHY OF A FLEA"
PART 16 OF 17 PARTS
(84:18-85:46) ACTIVITY CONTINUES. (85:50-86:30) THEY REALIZE THAT THE FATHER HAS DIED. (86:34-87:07) THE SCENE SHIFTS TO WHERE THE TWO FEMALES ARE IN BED TALKING. (87:11-88:43) "MONK" HOLMES ENTERS THE ROOM AND DISROBES AND GETS INTO BED WITH THE TWO FEMALES. THEY ALL GET UNDER THE COVERS. (88:46-89:56) DEPICTS A SHIFT SHOWING THE WIFE OF THE DEAD HUSBAND WHO IS NOW SUPPOSEDLY A MENTAL CASE. (90:00-90:07) THE SCENE AGAIN SHIFTS TO THE TWO YOUNG FEMALES IN A CHURCH WITH VEILS ON. THEY ARE APPARENTLY TAKING VOWS OF CHASTITY, ENTERING A MONASTERY TO LIVE WITH THE MONKS.

"THE AUTOBIOGRAPHY OF A FLEA": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 46834) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO MOOKS, INC. (DATE OF ISSUANCE: OCT. 12, 1976).

"THE AUTOBIOGRAPHY OF A FLEA"
PART 17 OF 17 PARTS
(90:11-91:35) DEPICT THE END OF THE FEATURE. THE FLEA NARRATES THAT HE HAS LEFT THE VAGINA OF THE 14 YEAR OLD AND HE HAS ENTERED THE VAGINA OF ANOTHER FEMALE. (91:39-93:04) CREDITS. THE END.

APPENDIX D

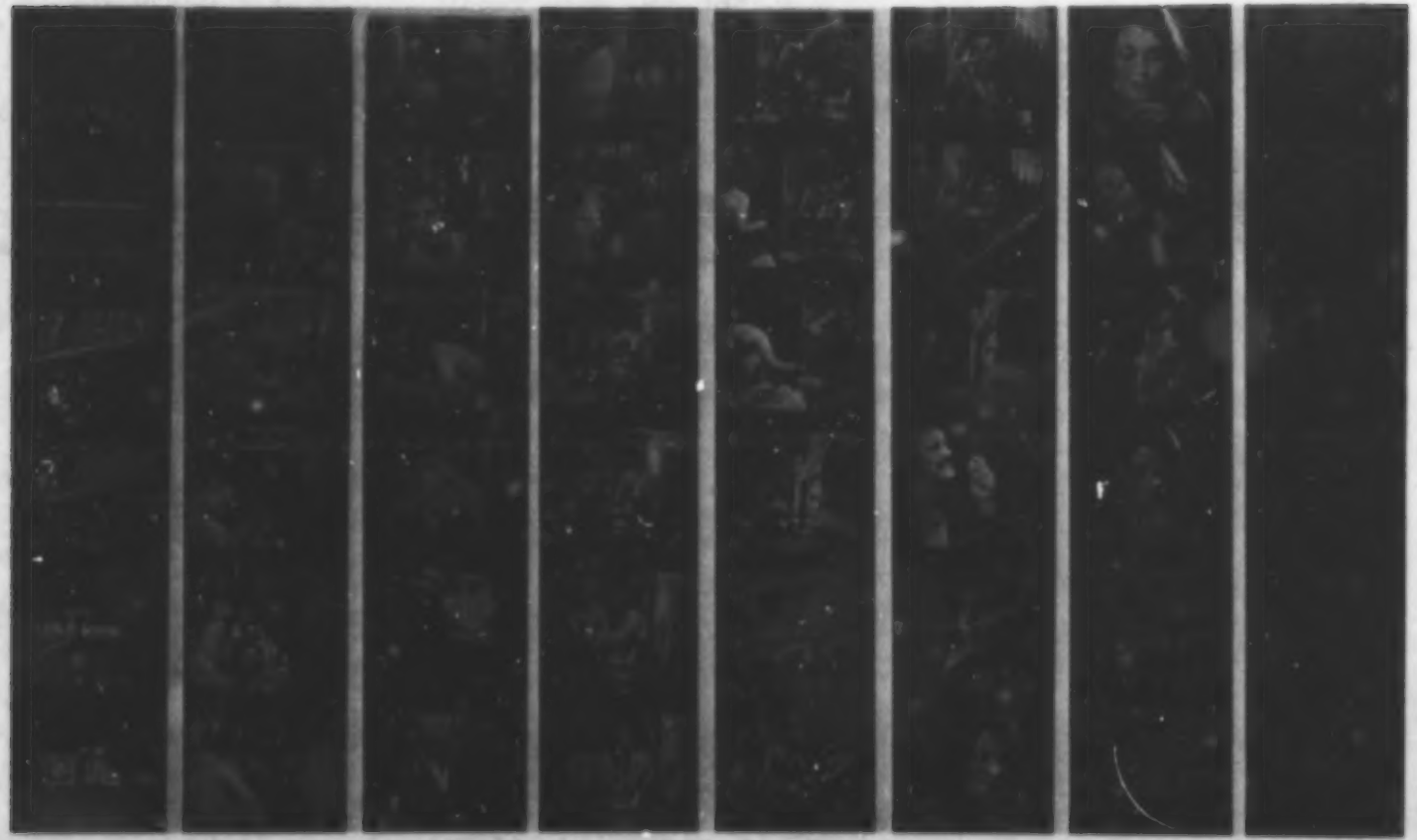
TIME-MOTION STUDY* OF THE FILM

"C.B. MAMAS"

The motion picture film "C.B. Mamas" was issued a "Certificate of Registration of a Claim to Copyright" by the Copyright Office on Nov. 11, 1976.

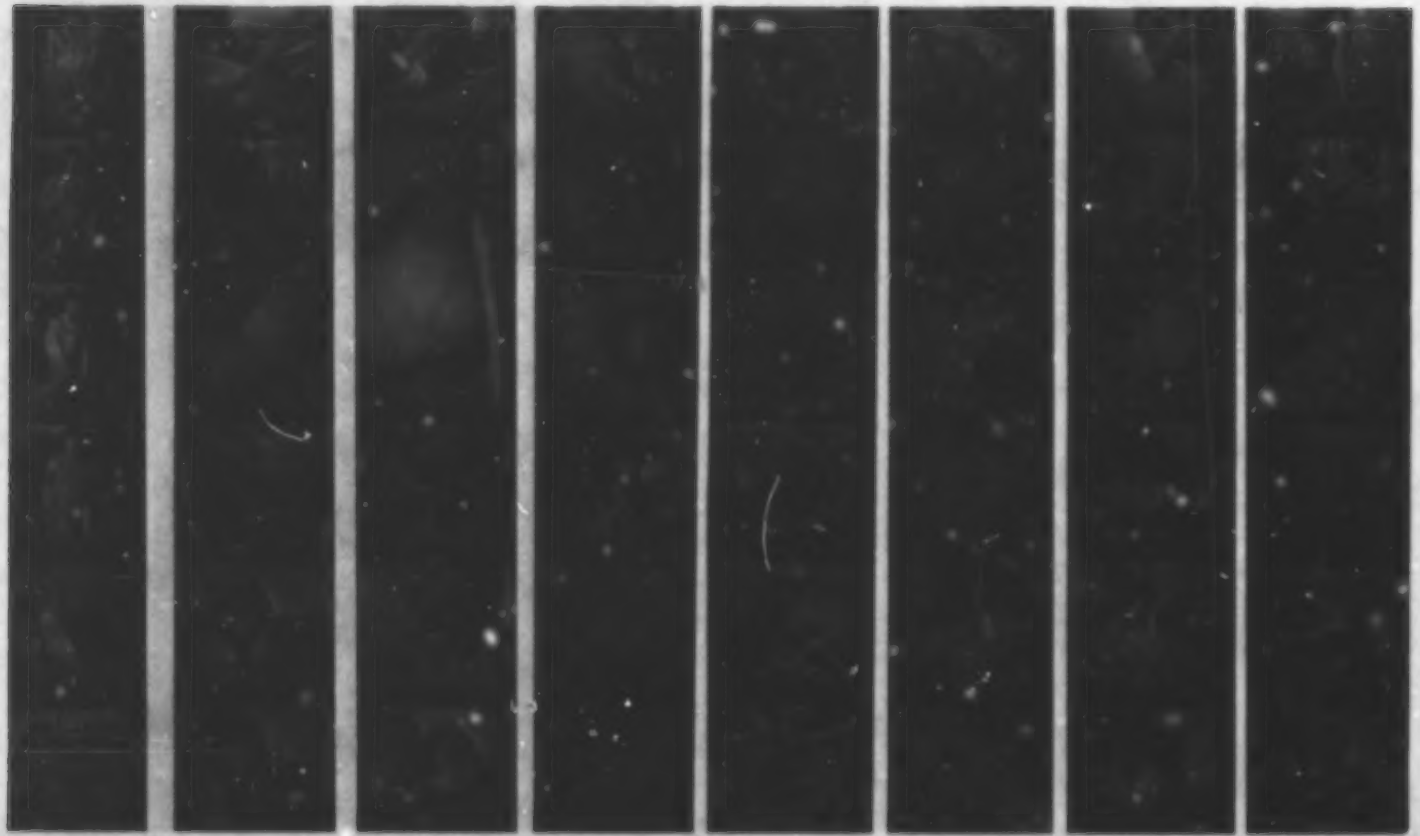
* A time-motion study is a chronological series of still photographs of a motion picture film, timed in their relative order of appearance, which, by "stopping" the movement appearing on the motion picture screen and recording the same, permits the type of conduct being portrayed thereon to be analyzed in a fair and accurate manner. Photographs have been taken every 3.6 seconds playing time.

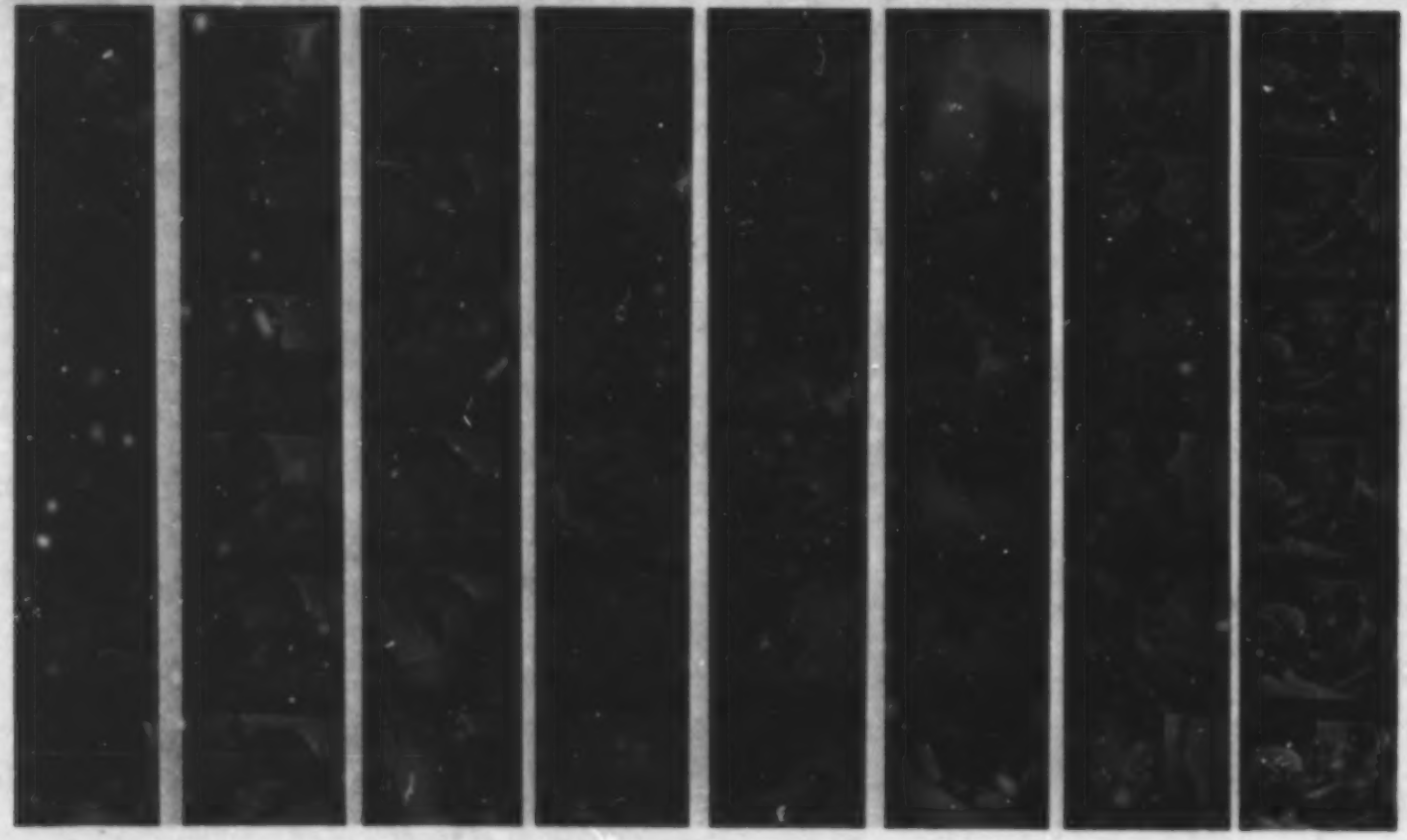
"C.B. MAMAS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 46891) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO MOOKS, INC. (DATE OF ISSUANCE: NOV. 11, 1976).



"C.B. MAMAS"
PART 1 OF 10 PARTS
(00:04-00:32) CREDITS. (00:35-01:17) INTRODUCTORY SCENES. (00:56-1:03) HOUSEWIFE LESLIE IN HOUSEROBE AND CURLERS PHONES GIRLFRIEND TO TELL HER THAT SHE WILL HAVE EVERYTHING READY IN 10 MINUTES. (1:07-1:17) LESLIE SAYS "GOOD-BYE" TO HER HUSBAND. (1:21-1:59) AND HASTELY CLEANS UP HOUSE FOR MEETING. (2:03-3:13) FEMALES GATHER FOR PARTY. (3:16-3:37) FOUR FEMALES MEET AND BROADCAST AN INVITATION TO MALES OVER "C.B." EQUIPMENT. (3:41-4:40) FOUR MALES RESPOND. (4:43-5:36) NAVY PILOT JUMPS FROM AN AIRPLANE. FIRST FEMALE, ON BED, EXPOSES HERSELF AS MALE IN PILOT'S UNIFORM. WATCHES.

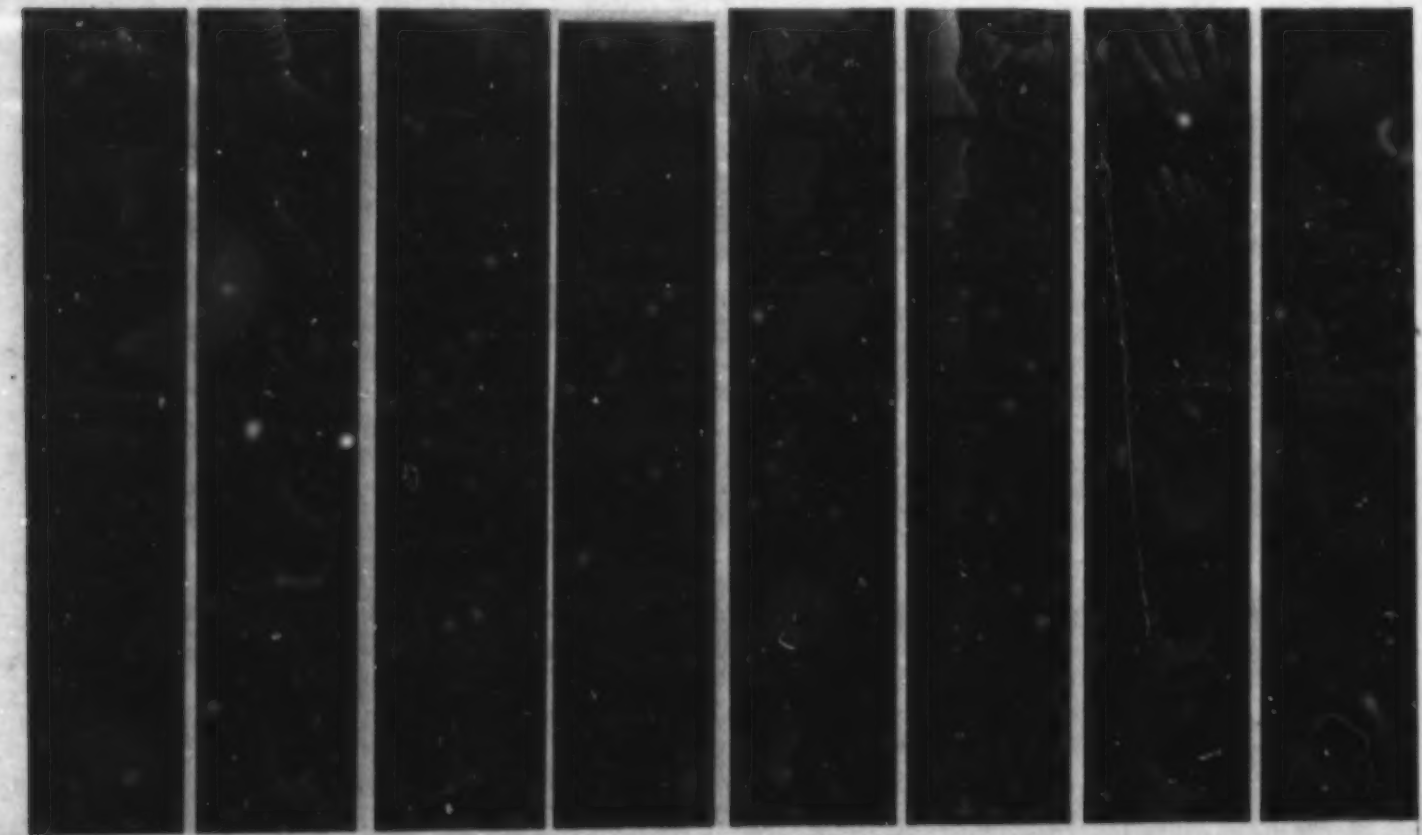
"C.B. MAMAS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 46891) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO MOOKS, INC. (DATE OF ISSUANCE: NOV. 11, 1976).



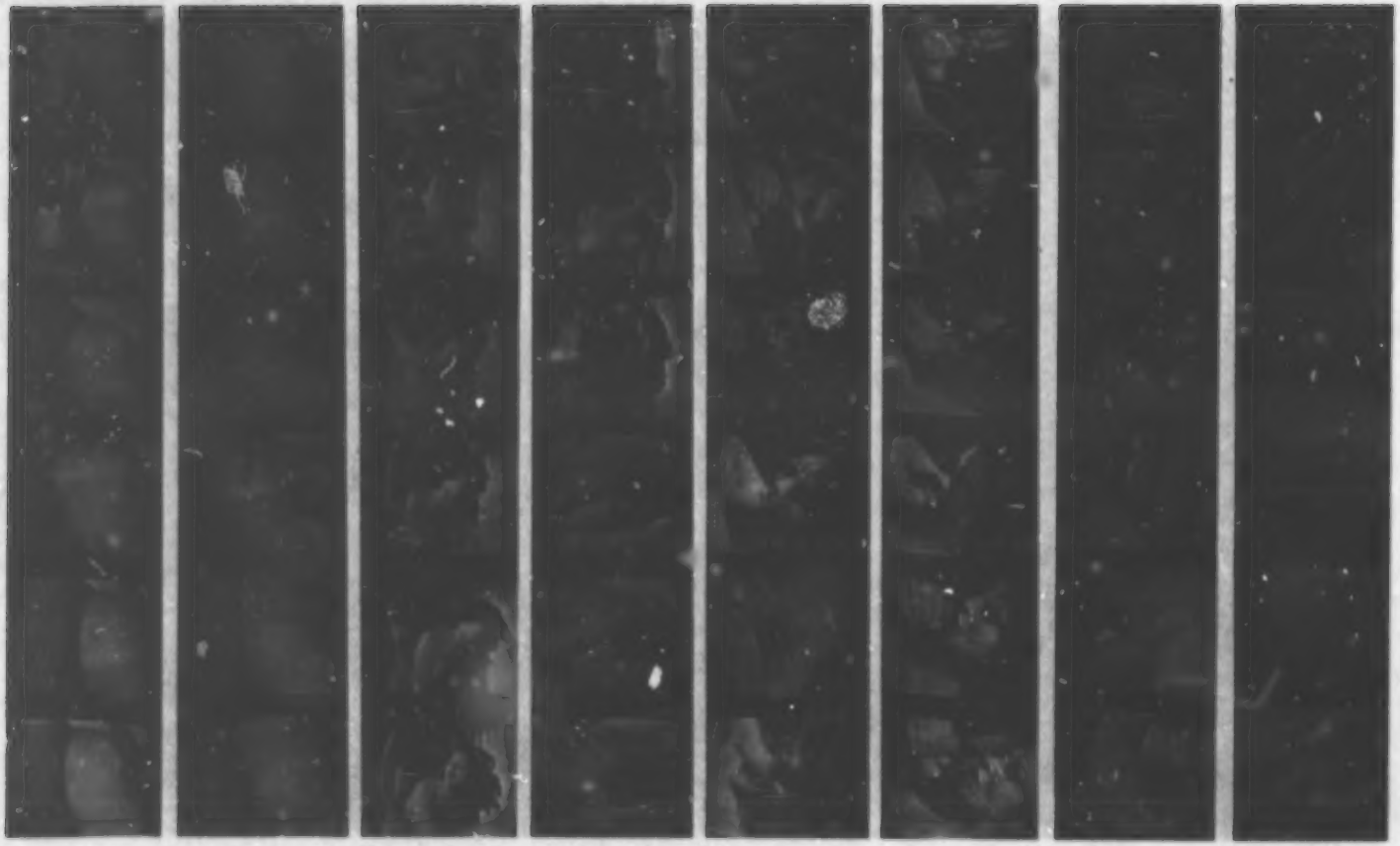


"C.B. MAMAS"
PART 2 OF 10 PARTS
(5:40-5:57) PILOT UNDRESSES AND PERFORMS CUNNILINGUS. (6:01-6:11) SEXUAL INTERCOURSE. (6:14-7:55) FEMALE PERFORMS FELLATIO ON PILOT. (7:59-9:51) FEMALE MOUNTS PILOT FOR SEXUAL INTERCOURSE. (9:55-11:11) SECOND MALE INVITES SECOND FEMALE "ITS TIME TO PLAY RUBBER DUCKY." MALE UNDRESSES FEMALE IN BATHROOM.

"C.B. MAMAS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 46891) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO MOOKS, INC. (DATE OF ISSUANCE: NOV. 11, 1976).

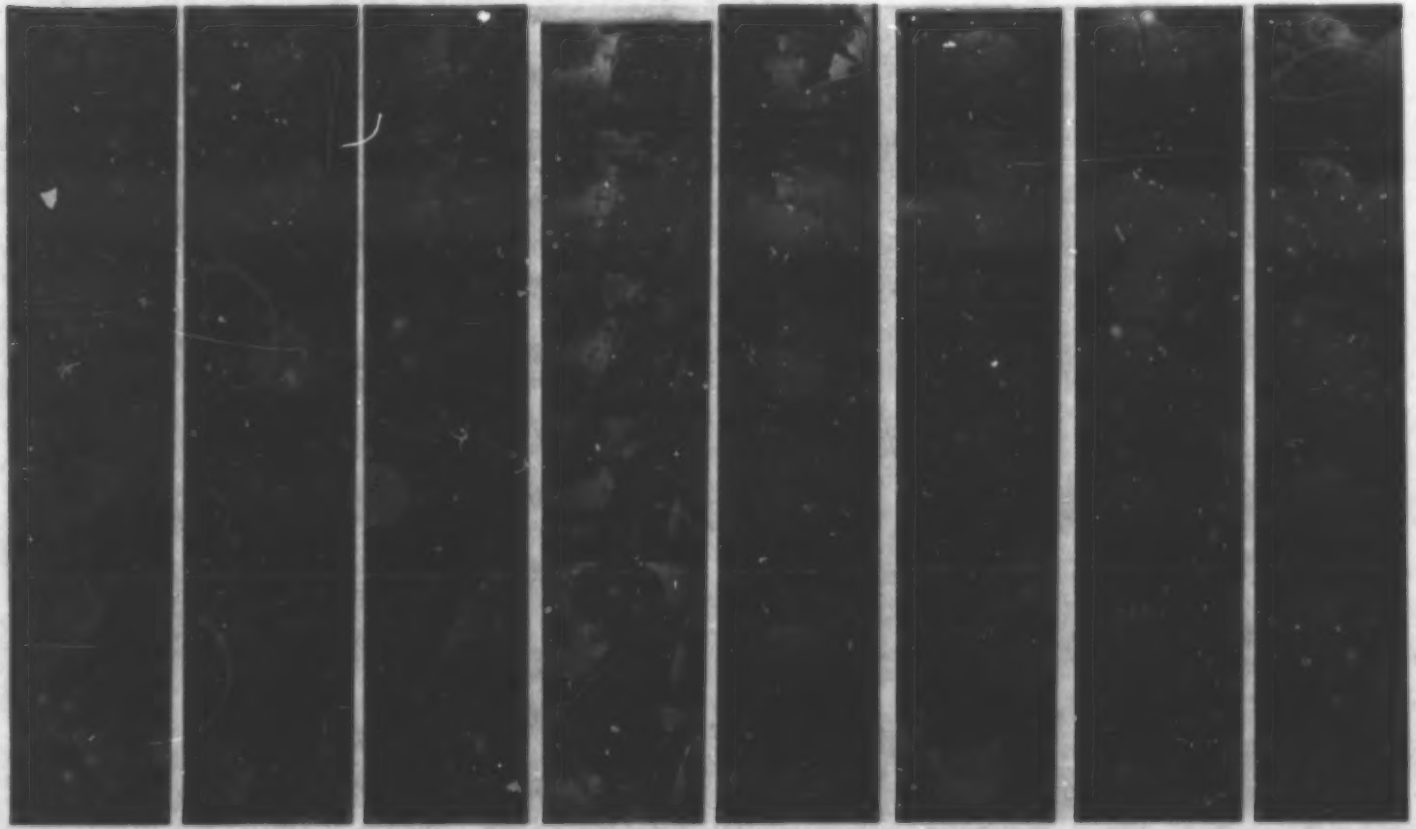


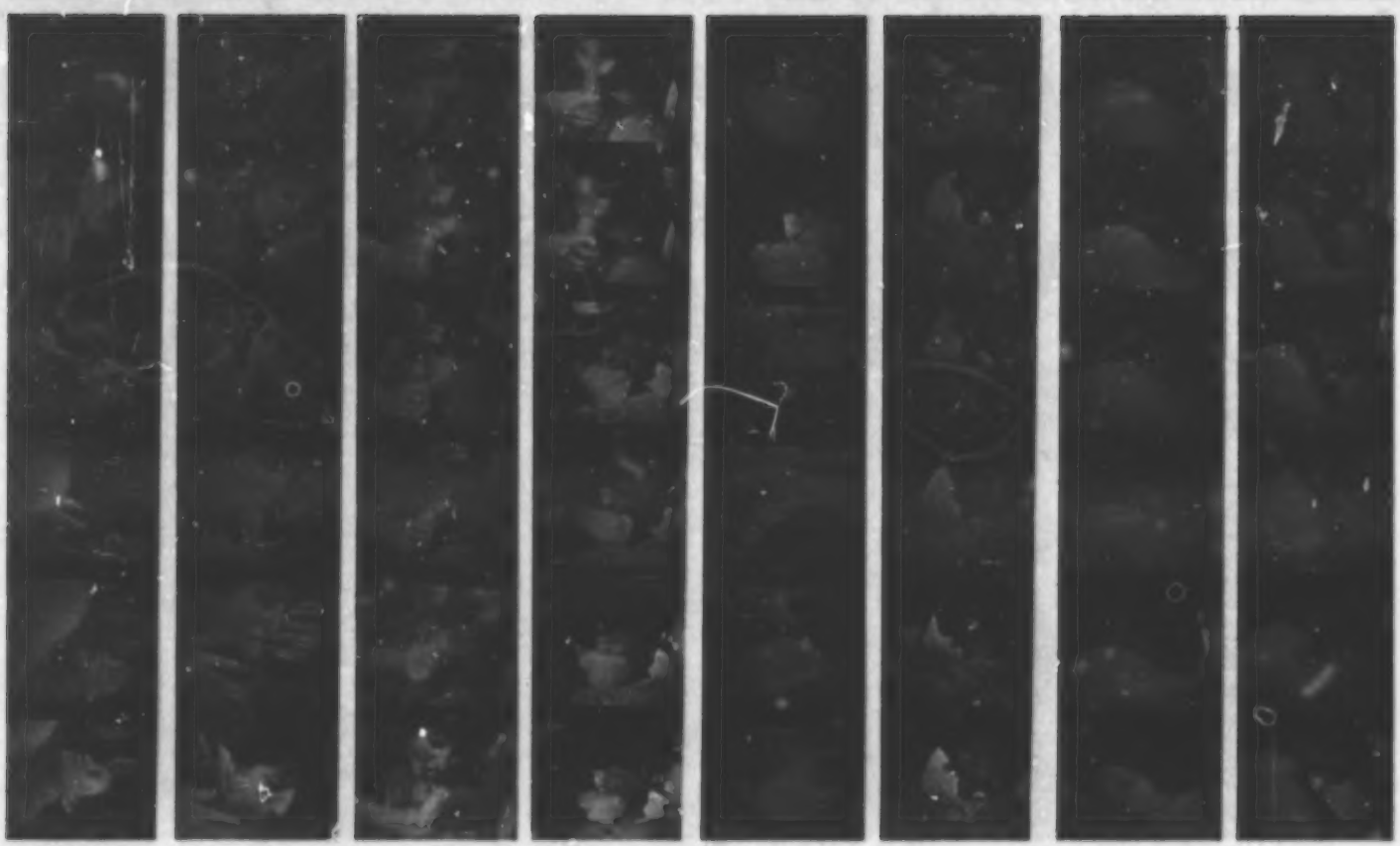
"C.B. MAMAS"
PART 3 OF 10 PARTS
(11:15-13:30) NUDE FEMALE, HOLDING SUCKER, IS IN TUB AS SECOND MALE BEGINS SCRUBBING HER BREASTS, THIGH, FEET AND VAGINA. (13:42-15:12) SECOND FEMALE PERFORMS FELLATIO ON SECOND MALE. (15:15-16:47) SECOND MALE AND SECOND FEMALE ENGAGE IN SEXUAL INTERCOURSE WITH MALE RECLINING.



"C.B. MAMAS"
PART 4 OF 10 PARTS
(16:50-17:01) EJACULATION. (17:04-17:55) THIRD MALE ENGAGES THIRD FEMALE IN SEXUAL INTERCOURSE FROM THE REAR.
(19:59-21:12) FELLATIO. (21:16-22) SEXUAL INTERCOURSE WITH FEMALE RECLINING.

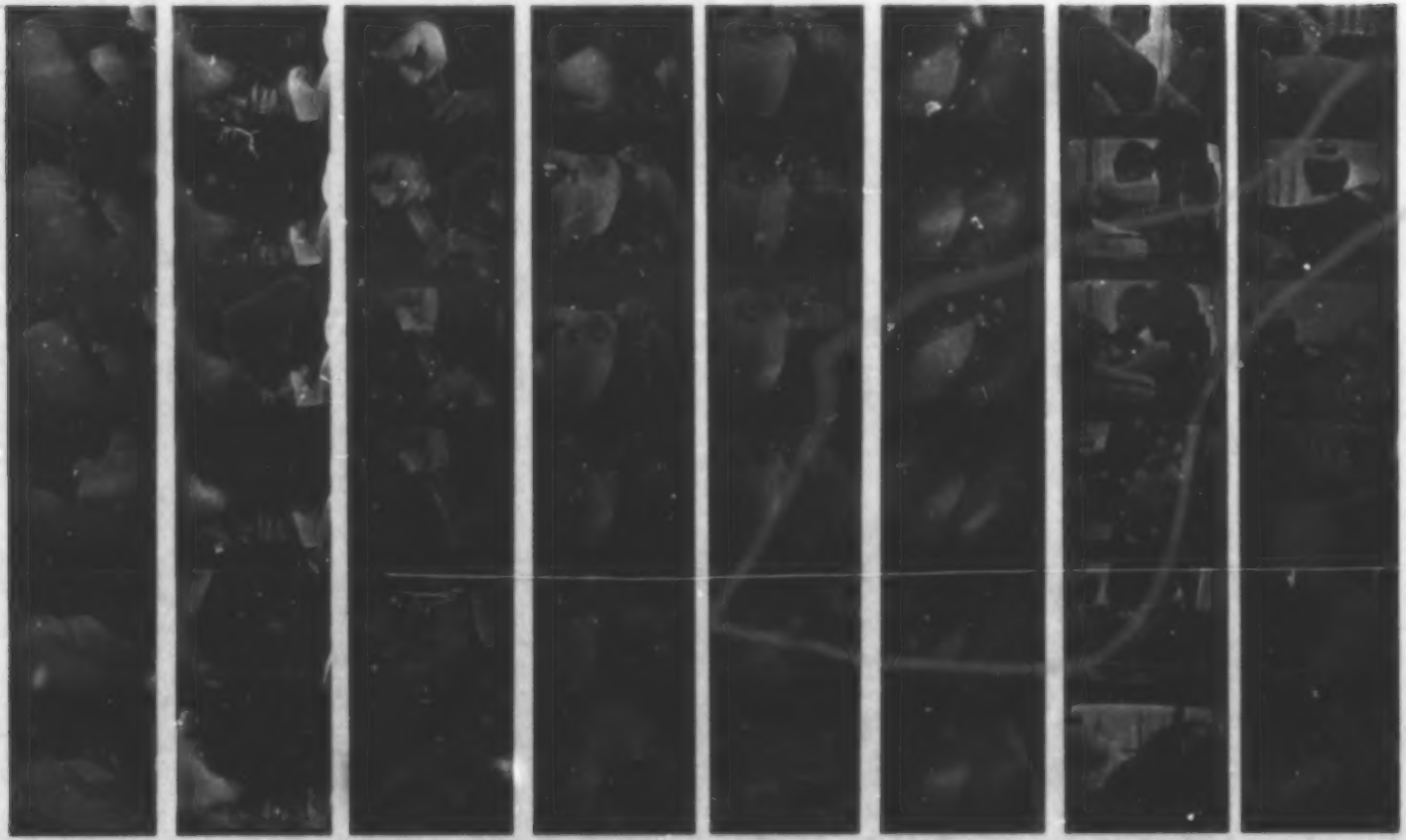
"C.B. MAMAS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 46891) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO MOOKS, INC. (DATE OF ISSUANCE: NOV. 11, 1976).

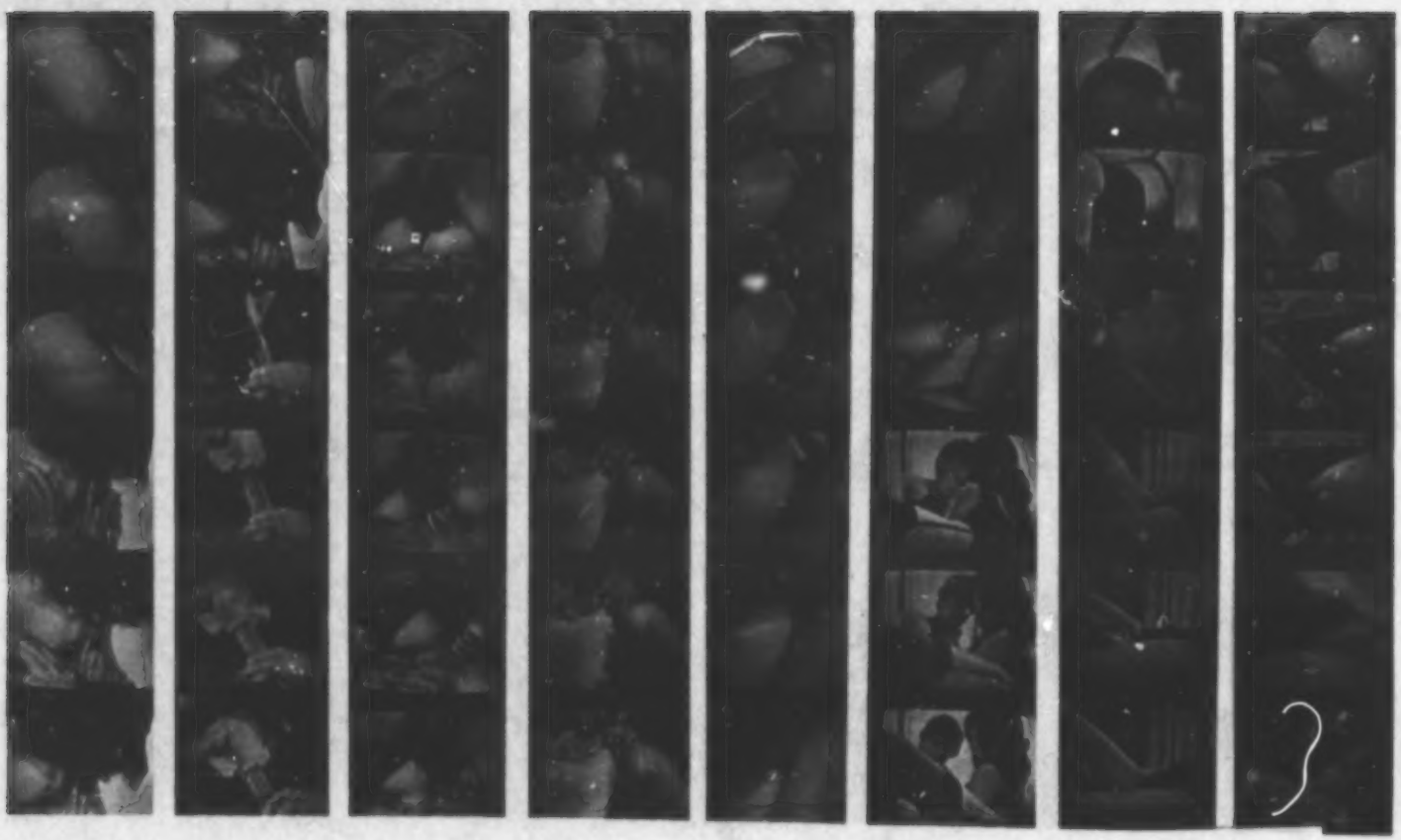




"C.B. MAMAS"
PART 5 OF 10 PARTS
(22:26-23:19) SEXUAL INTERCOURSE. (23:22-24:56) FELLATIO. (24:59-27:57) MALE KISSES, MASSAGES BREASTS, THEN LICKS ANUS OF FEMALE, AS FEMALE MASTURBATES.

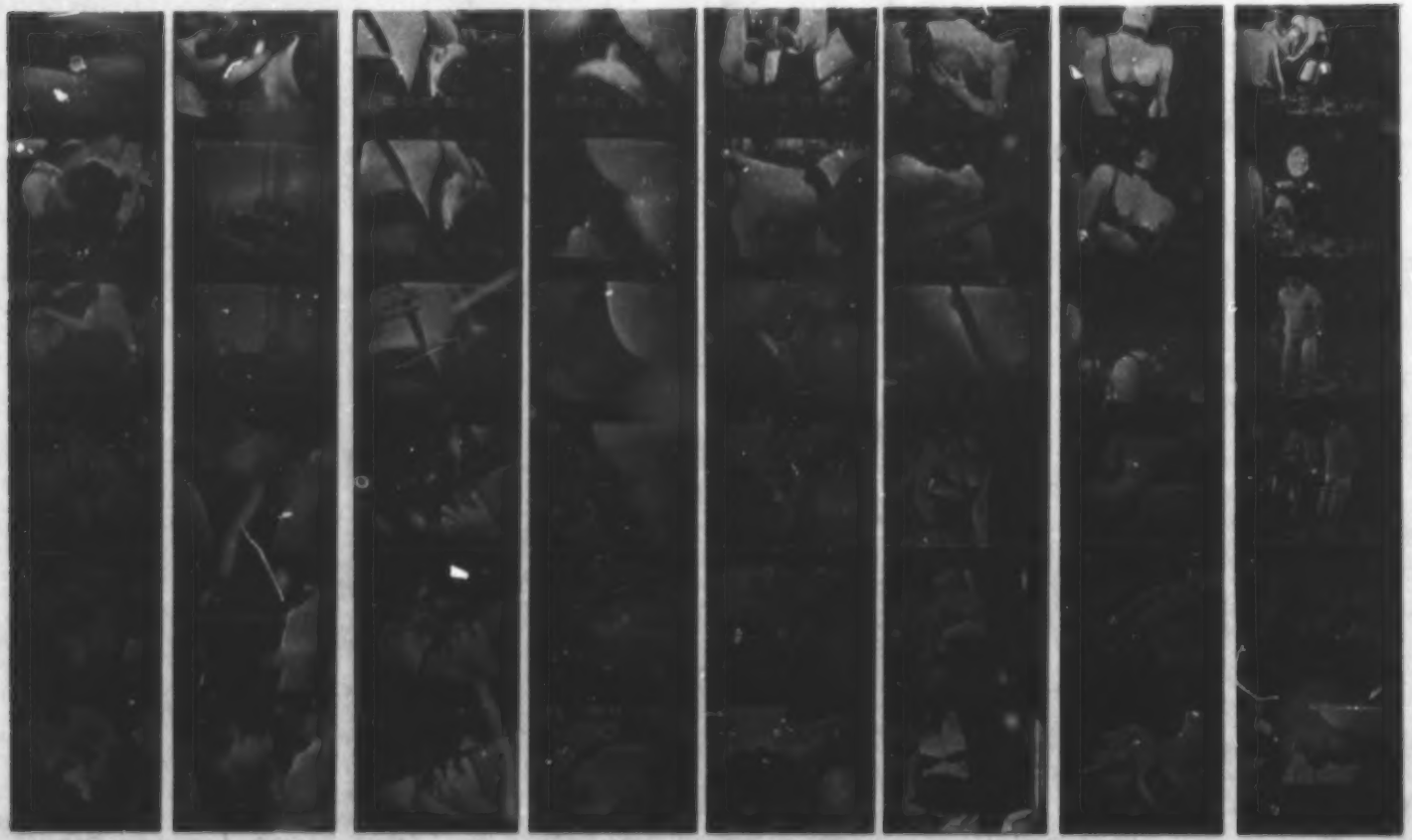
"C.B. MAMAS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 46891) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO MOOKS, INC. (DATE OF ISSUANCE: NOV. 11, 1976).





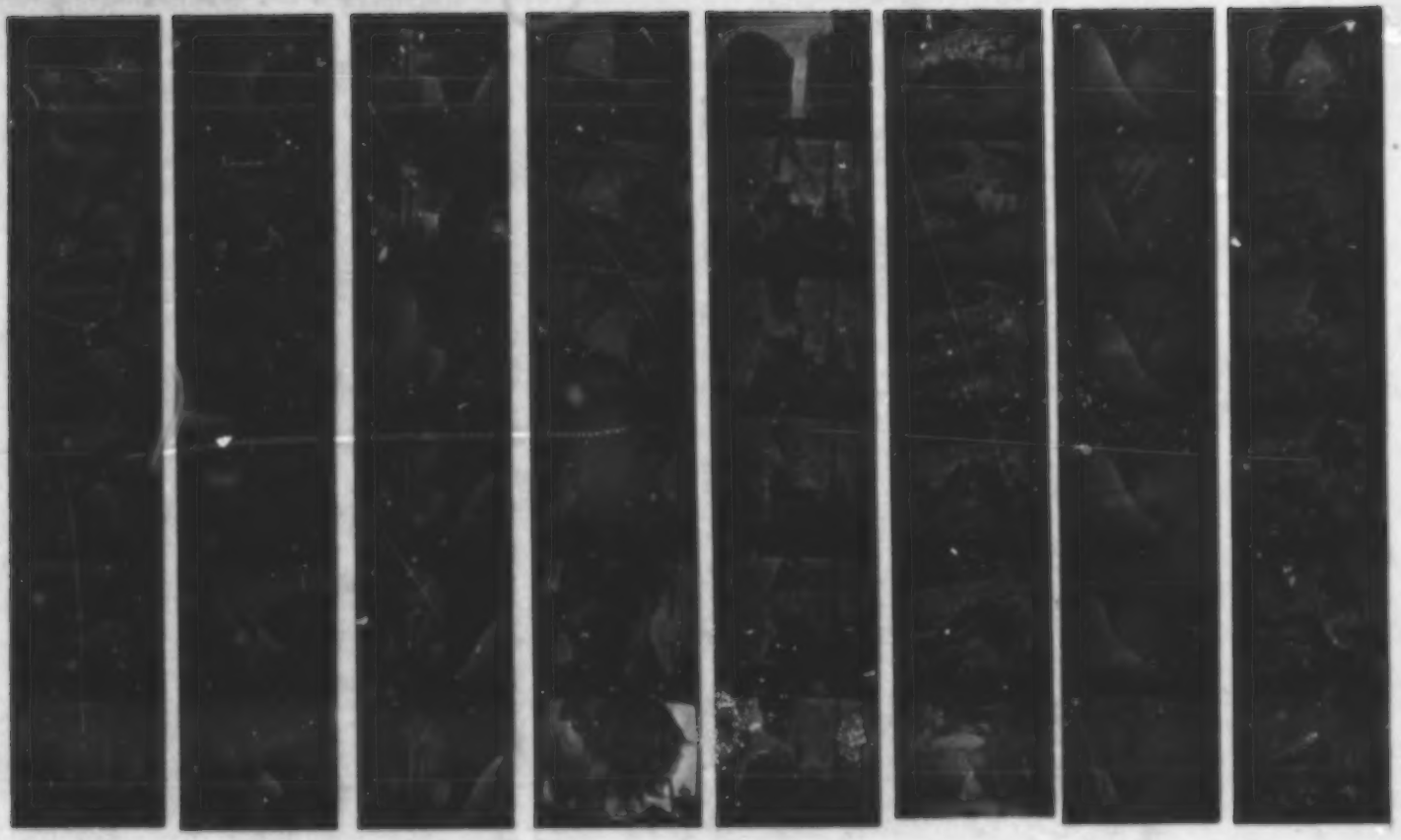
"C.B. MAMAS"
PART 6 OF 10 PARTS
(28:01-29:07) MALE LICKS ANUS OF FEMALE AS SHE MASTURBATES. (29:11-29:35) FELLATIO. (29:39-30:07) SEXUAL INTERCOURSE MALE SUPERIOR. (30:10-30:59) FEMALE EXPOSES HER VAGINA AND PLACES HER FINGER IN HER ANUS. (31:02-31:58) SEXUAL INTERCOURSE FROM THE REAR. (32:02-33:33) TWO FEMALES ENGAGE IN LESBIAN ACTIVITY.

"C.B. MAMAS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 46891) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO MOOKS, INC. (DATE OF ISSUANCE: NOV. 11. 1976).



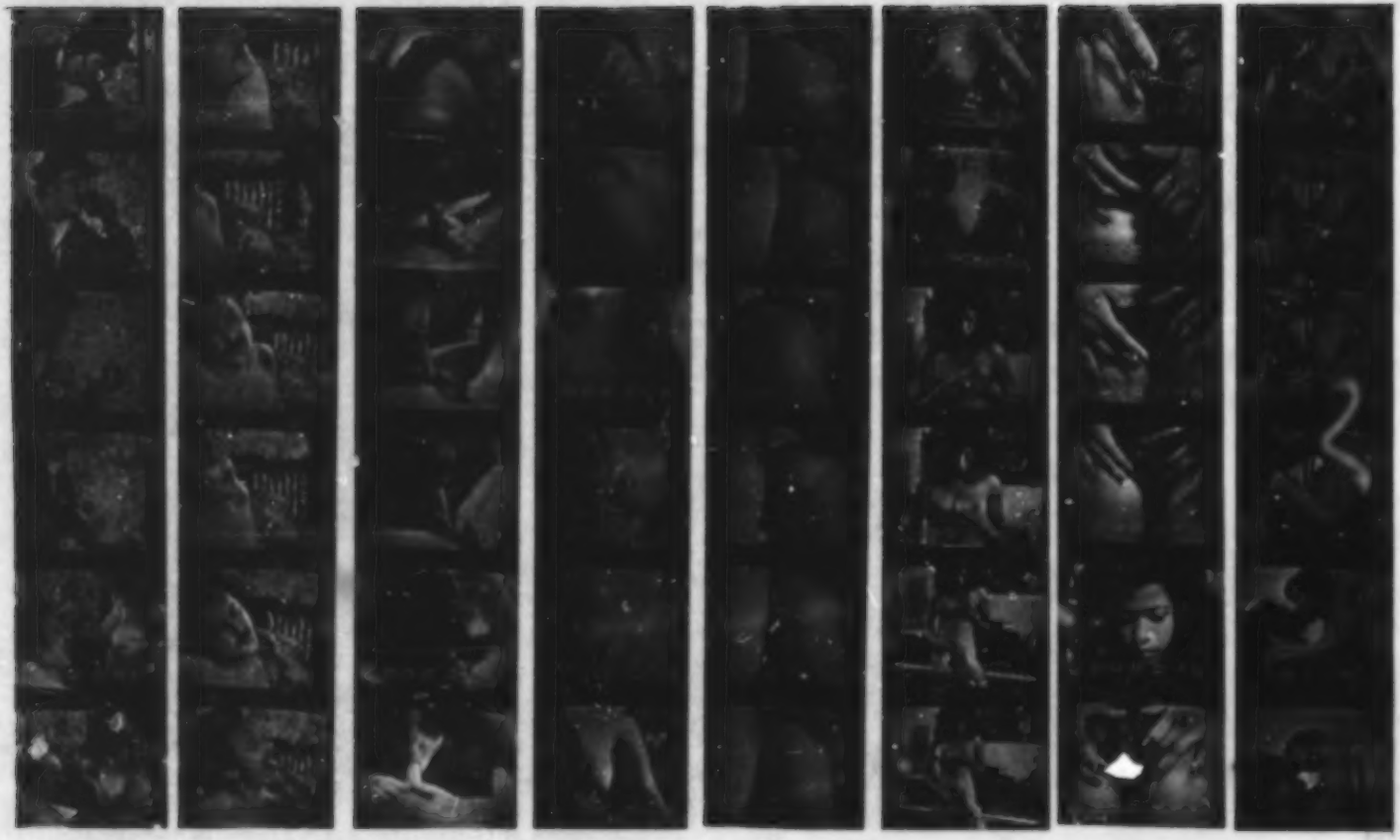
"C.B. MAMAS"
PART 7 OF 10 PARTS
(33:36-33:54) TWO FEMALES ENGAGE IN LESBIAN ACTIVITY. LESBIAN KISSING. (33:57-34:46) CUNNILINGUS. (34:49-36:10) DOUBLE CUNNILINGUS. (36:13-33:08) CUNNILINGUS. (38:12-39:08) MALE INTERRUPTS LESBIAN ACTIVITY AND ENGAGES FEMALE IN SEXUAL INTERCOURSE.

"C.B. MAMAS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 46891) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO MOOKS, INC. (DATE OF ISSUANCE: NOV. 11, 1976).



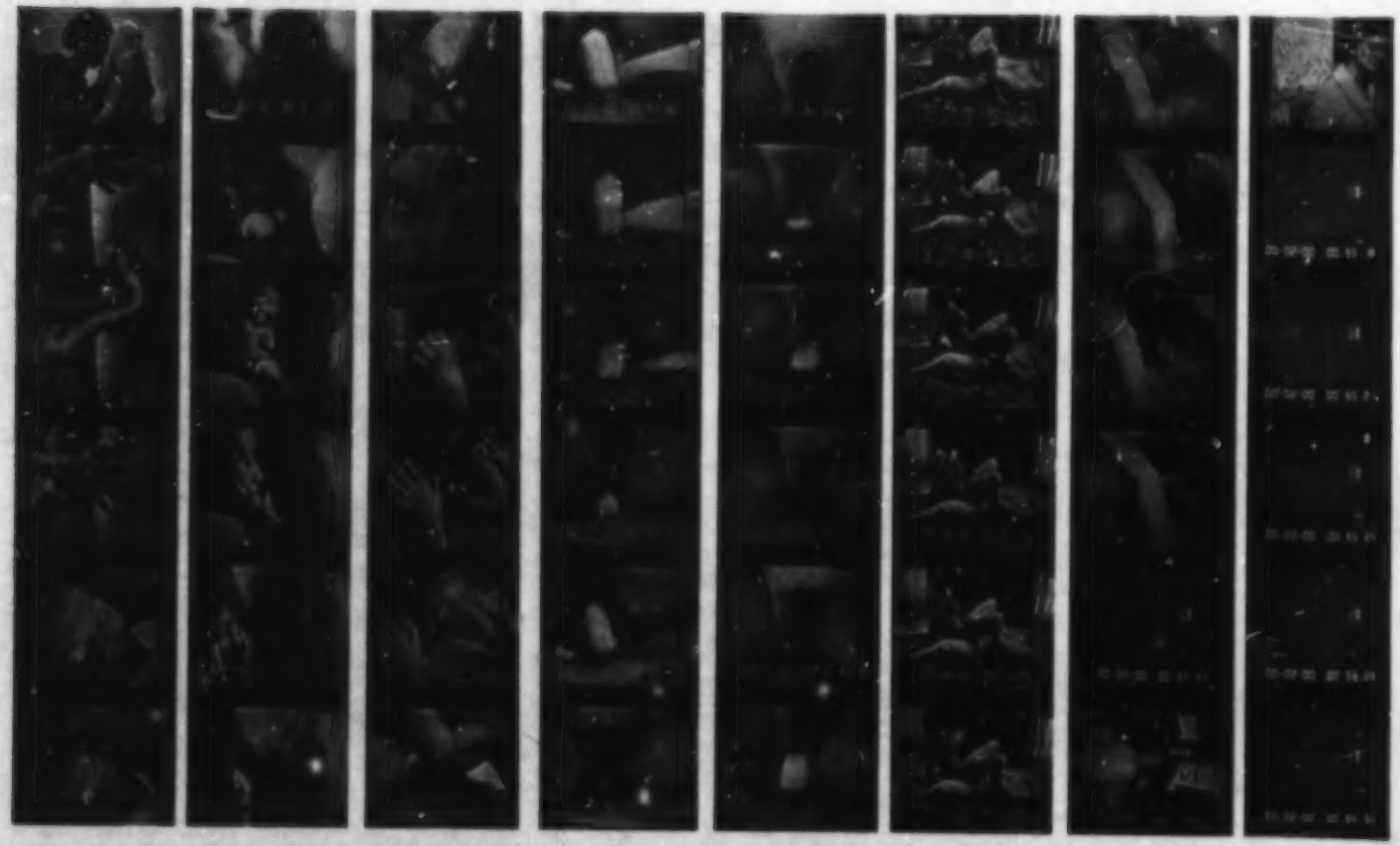
"C.B. MAMAS"
PART 8 OF 10 PARTS
(39:11-40:42) MALE ENGAGES FEMALE IN SEXUAL INTERCOURSE WITH MALE SUPERIOR. (40:46-40:49) FEMALE ENGAGES IN SEXUAL INTERCOURSE WITH FEMALE SUPERIOR. (40:53-41:34) FELLATIO. (41:38-42:20) SEXUAL INTERCOURSE FROM THE REAR. (42:23-44:15) LESLIE'S DAUGHTER LIES ON HER BED AND BEGINS TO MASTURBATE, SHE SAYS "MOM, SHIT. HER AND HER PARTY. WHAT ABOUT ME. I WANT SOME PARTY TOO." (44:20-44:43) A MALE ENTERS AND SAYS "EXCUSE ME, HEY YOU KNOW WHERE I CAN GET SOME MILK FOR MY COFFEE?" FEMALE MANIPULATES HER BREAST AND SQUIRTS MILK INTO A CUP.

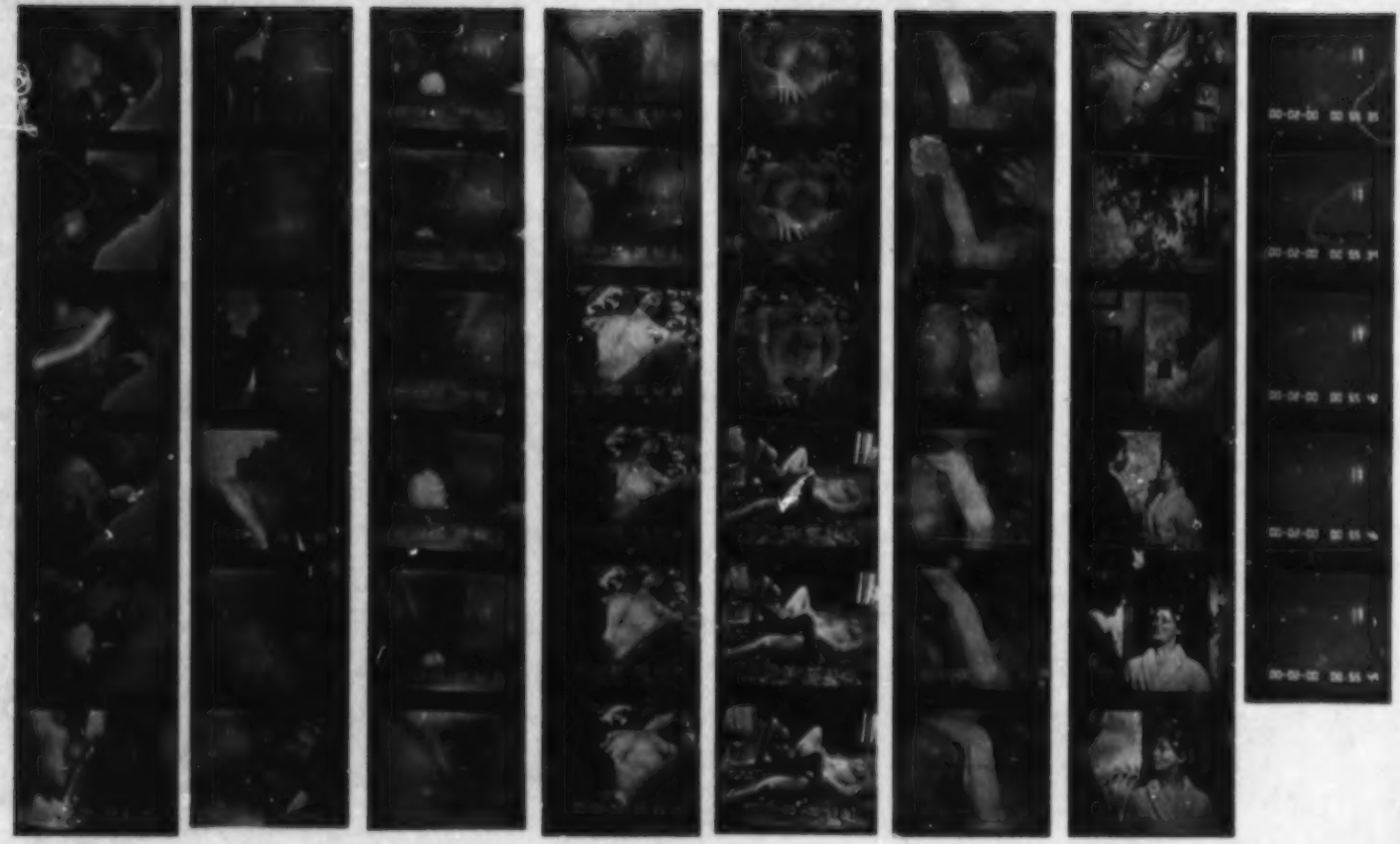
"C.B. MAMAS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 46891) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO MOOKS, INC. (DATE OF ISSUANCE: NOV. 11, 1976).



"C.B. MAMAS"
PART 9 OF 10 PARTS
(44:46-46:17) FEMALE (LESLIE'S DAUGHTER) CONTINUES TO MANIPULATE HER BREASTS AND SQUIRT MILK AT MALE'S FACE. (46:21-47:27) SHE PERFORMS FELLATIO ON MALE. (47:30-48:40) MALE PERFORMS SEXUAL INTERCOURSE FROM THE REAR. (48:44-49:54) FEMALE NEGRO MASSAGES HER BREASTS AND VAGINAL AREA. (49:57-50:18) NUDE MALE KISSES FEMALE AND MASSAGES HER BREAST.

"C.B. MAMAS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 46891) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO MOOKS, INC. (DATE OF ISSUANCE: NOV. 11, 1976).





"C.B. MAMAS"
PART 10 OF 10 PARTS
(50:21-50:58) KISSING CONTINUES. (51:00-51:49) FELLATIO. (51:52-54:36) SEXUAL INTERCOURSE WITH FEMALE SUPERIOR. (54:40-54:43) EJACULATION ON FEMALE'S STOMACH. PARTY IS OVER. (54:47-55:01) RETURN TO FEMALE IN HOUSECOAT AND CURLERS. (55:04-55:49) LESLIE IN HOUSECOAT AND HAIR CURLERS OPENS THE DOORS FOR HER HUSBAND; SHE BERATES HIM "YOU GOT A BOOZE SMELL ON YOU AGAIN" ETC., ETC. FEATURE ENDS.

APPENDIX D

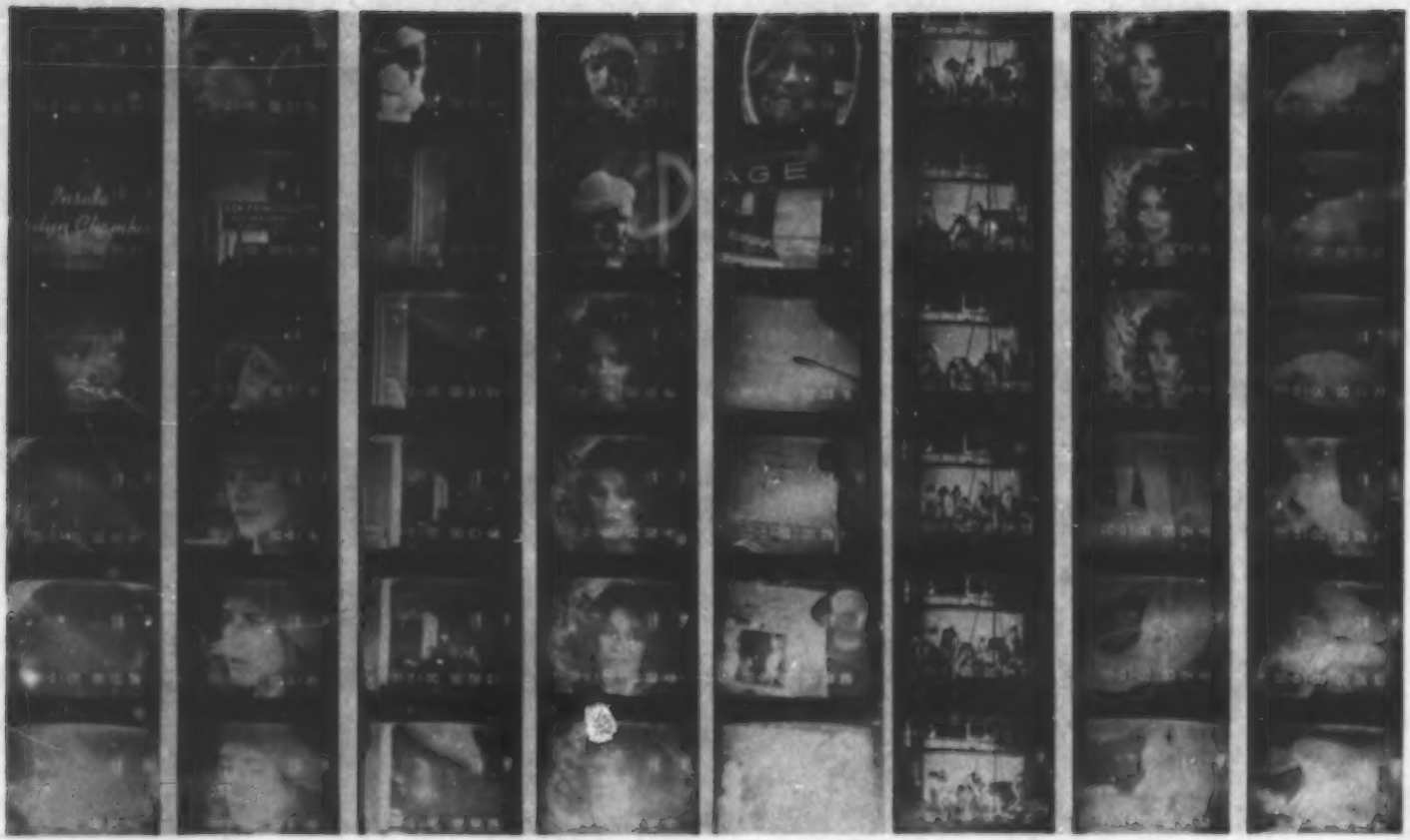
TIME-MOTION STUDY* OF THE FILM

"INSIDE MARILYN CHAMBERS"

The motion picture film "Inside Marilyn Chambers" was issued a "Certificate of Registration of a Claim to Copyright" by the Copyright Office on Nov. 18, 1976.

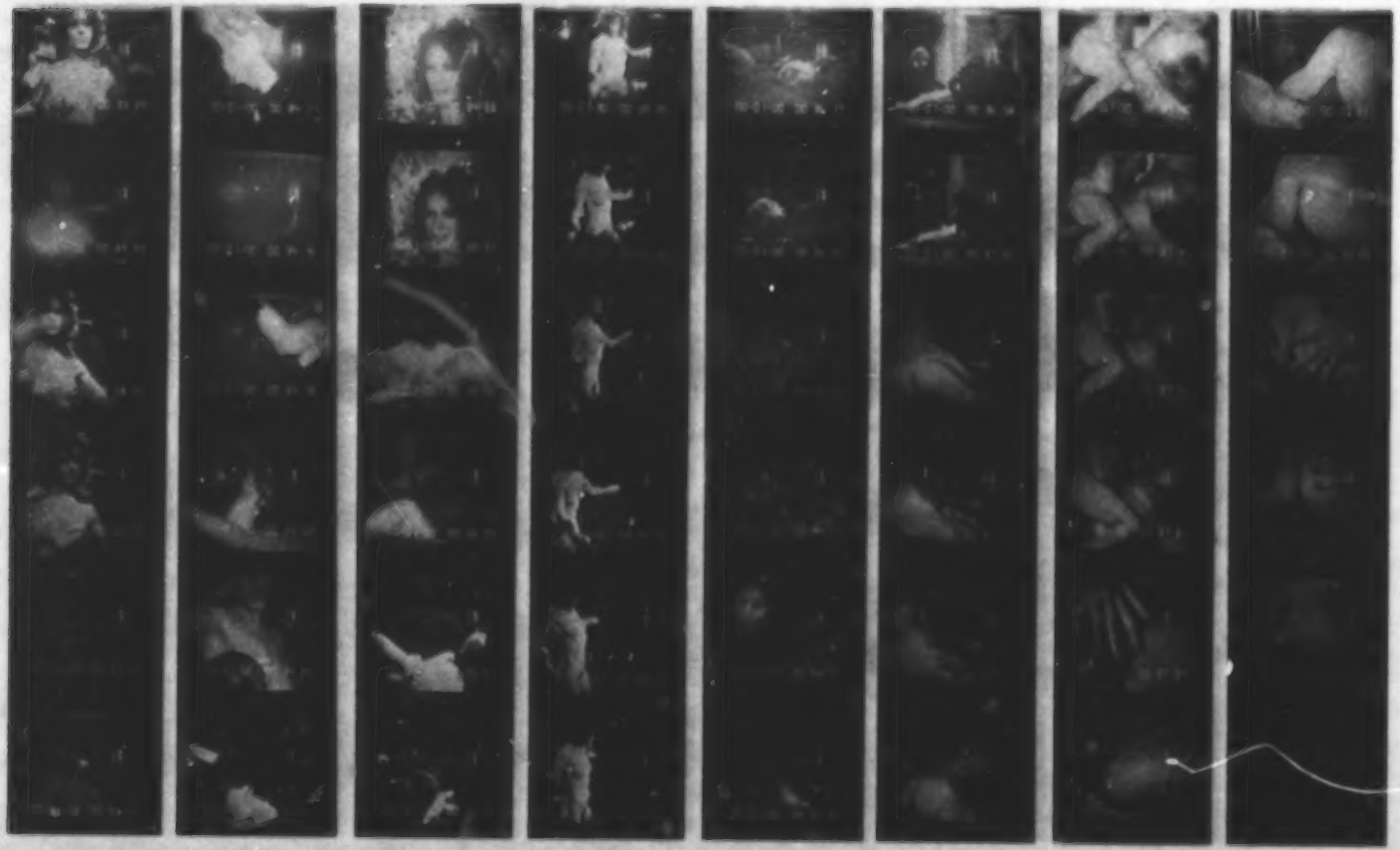
* A time-motion study is a chronological series of still photographs of a motion picture film, timed in their relative order of appearance, which, by "stopping" the movement appearing on the motion picture screen and recording the same, permits the type of conduct being portrayed thereon to be analyzed in a fair and accurate manner. Photographs have been taken every 3.6 seconds playing time.

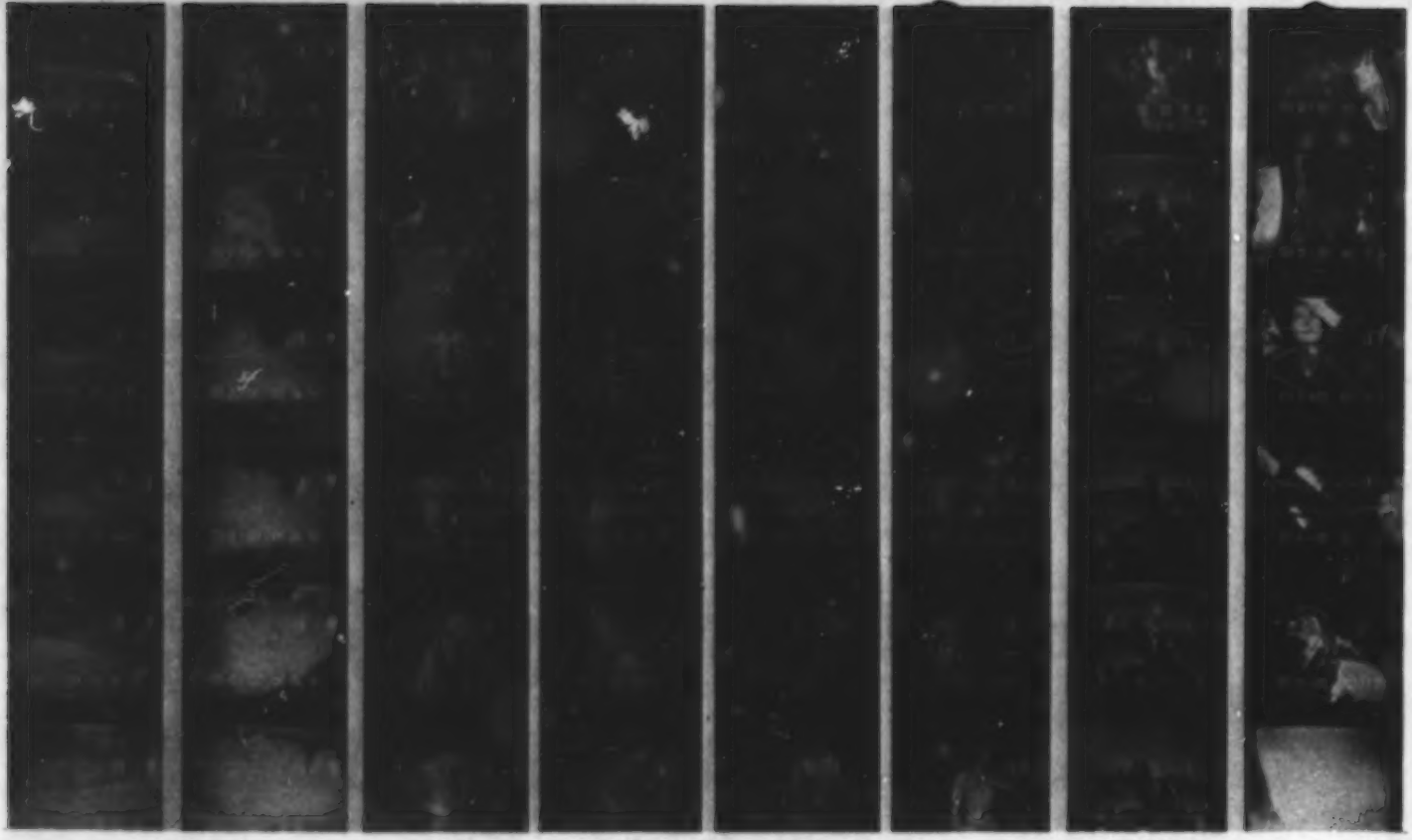
"INSIDE MARILYN CHAMBERS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 30483) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 18, 1976).



"INSIDE MARILYN CHAMBERS"
PART 1 OF 14 PARTS
(00:03-04:42) DEPICT THE TITLE "INSIDE MARILYN CHAMBERS" PLUS VARIOUS SHOTS OF HER WALKING AND TALKING.
(04:45-05:34) DEPICT SEXUAL INTERCOURSE.

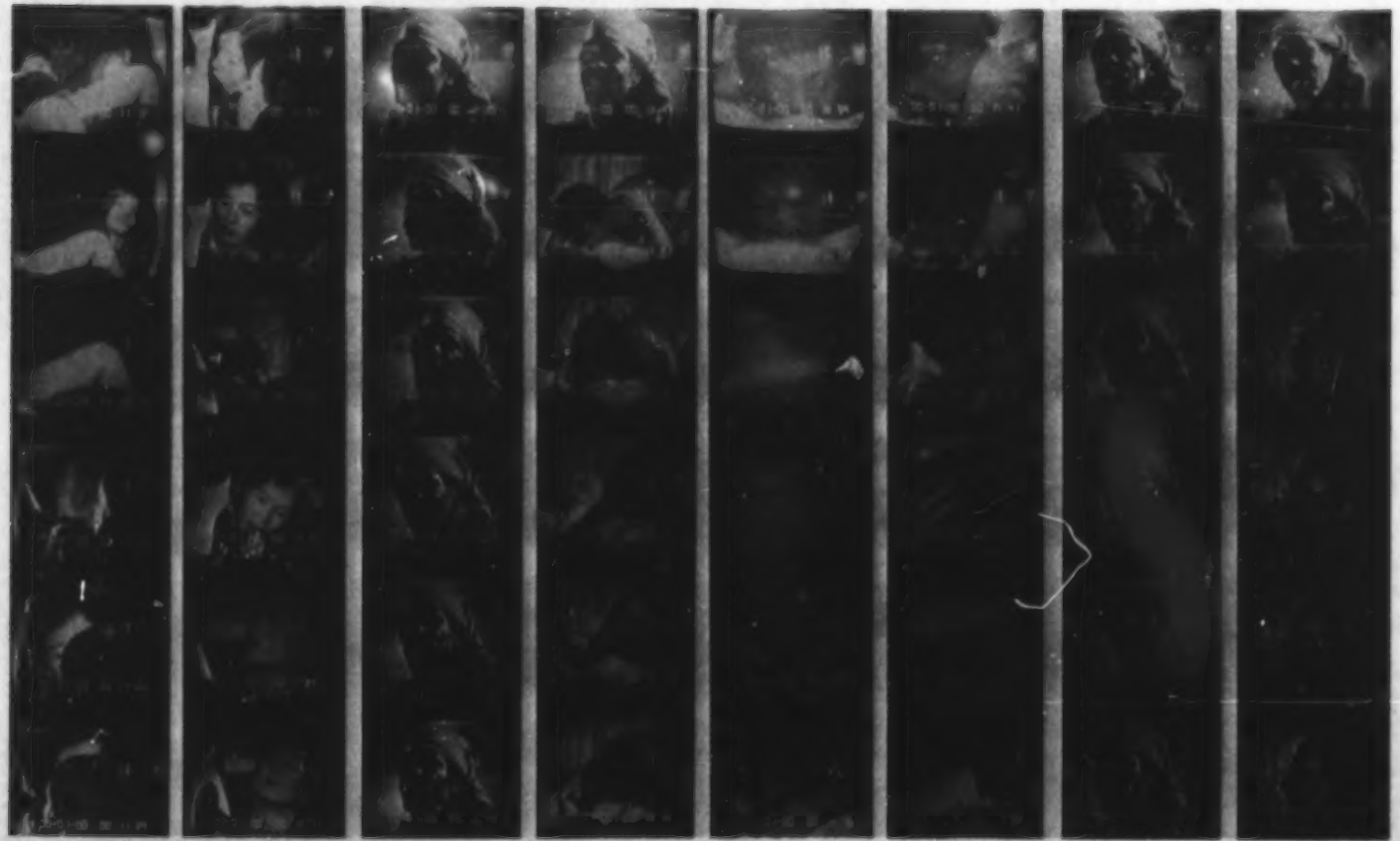
"INSIDE MARILYN CHAMBERS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 30483) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 18. 1976).

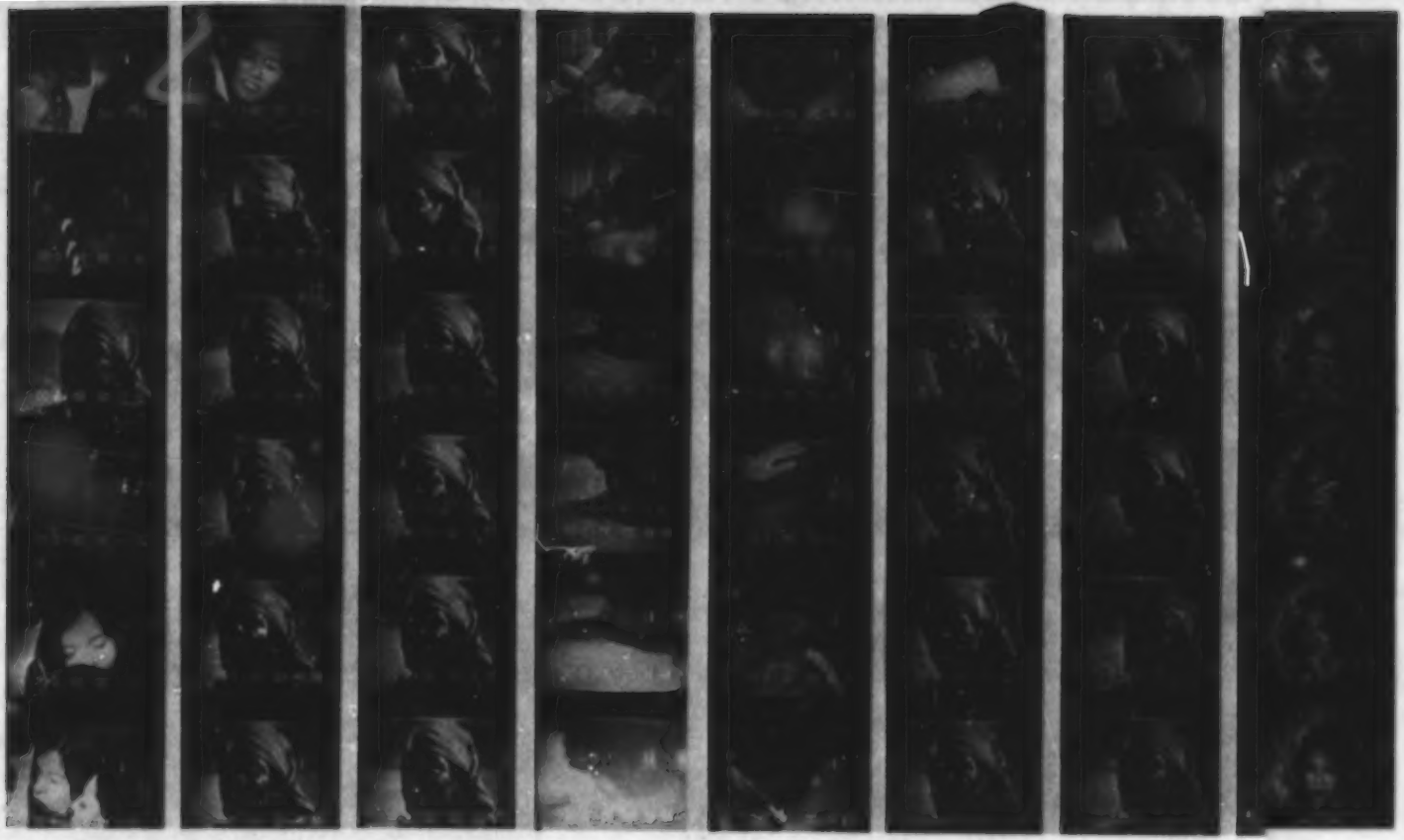




"INSIDE MARILYN CHAMBERS"
PART 2 OF 14 PARTS
(05:37-09:13) TWO FEMALES ARE ENGAGED IN FONDLING AND MASTURBATION. ALSO, SOME SEXUAL INTERCOURSE SCENES WITH MARILYN CHAMBERS. (09:17-10:09) CONTINUE TO DEPICT SEXUAL ACTIVITY. (10:12-10:40) MALE NEGRO STAR JOHNNY KEYES IS INTERVIEWED AND RECALLS HIS MEETING WITH MARILYN CHAMBERS. (10:44-11:08) FEMALES PREPARE FOR FELLATIO.

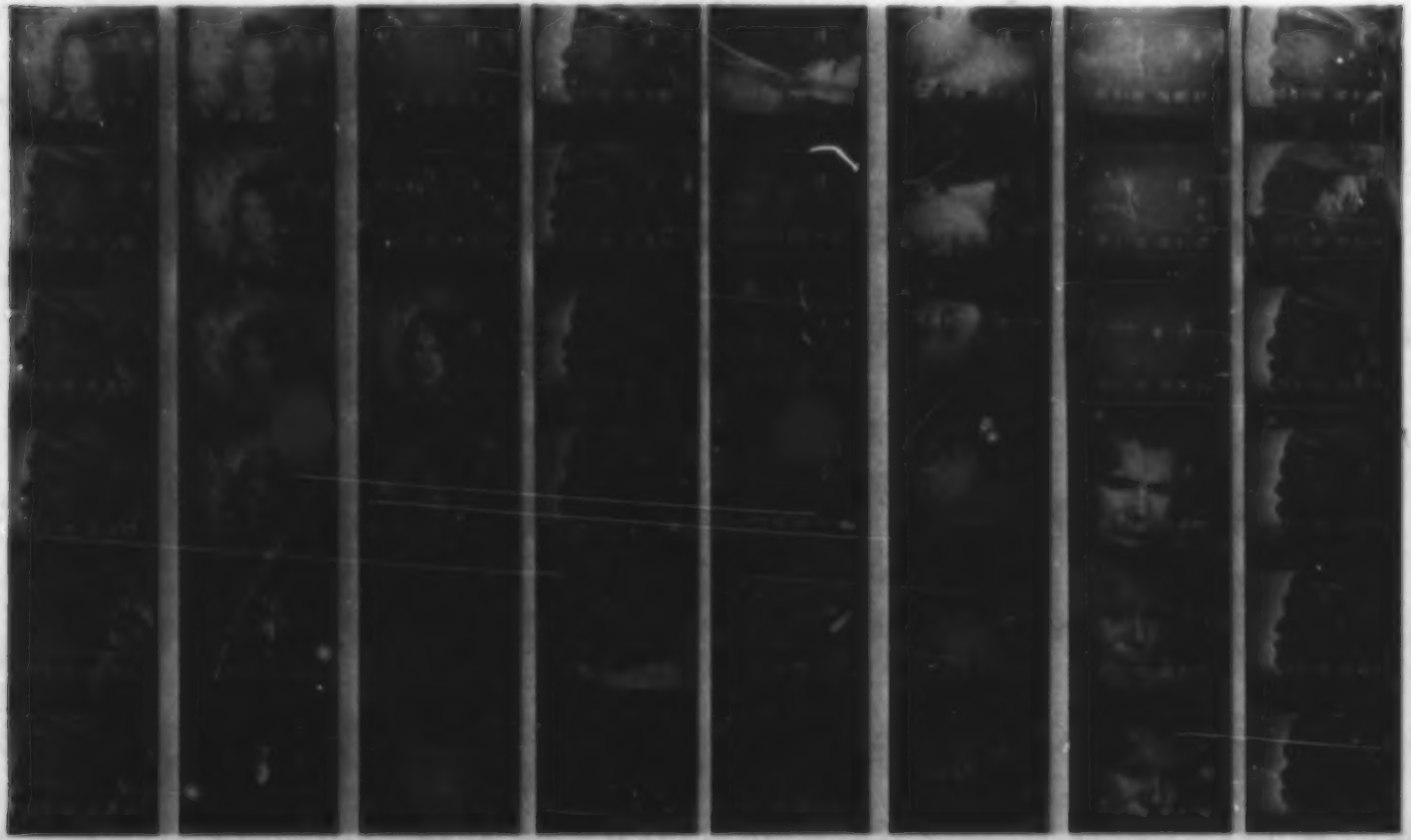
"INSIDE MARILYN CHAMBERS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 30483) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 18, 1976).

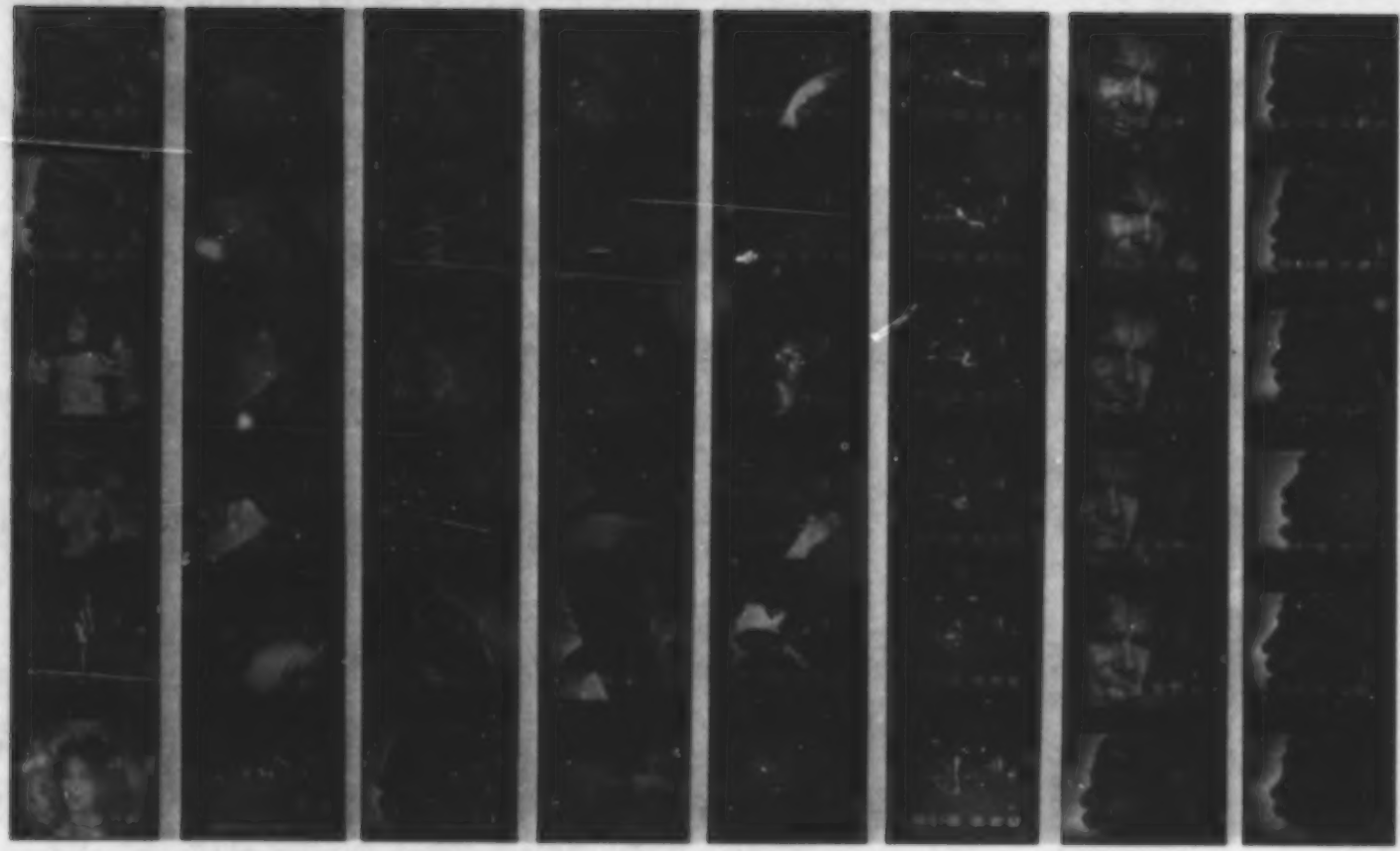




"INSIDE MARILYN CHAMBERS"
PART 3 OF 14 PARTS
(11:12-15:02) CONTAINS SCENES THAT WERE NOT SHOWN IN "BEHIND THE GREEN DOOR" SHOWING TWO FEMALES FELLATING JOHNNY KEYES. HE RECALLS THOSE SCENES AND RELATES HOW HE AND MARILYN MET. SCENES OF KEYES AND CHAMBERS ENGAGED IN CUNNILINGUS AND SEXUAL INTERCOURSE. (15:05-16:43) FACES OF KEYES AND MARILYN CHAMBERS AS INTERVIEWS CONTINUE.

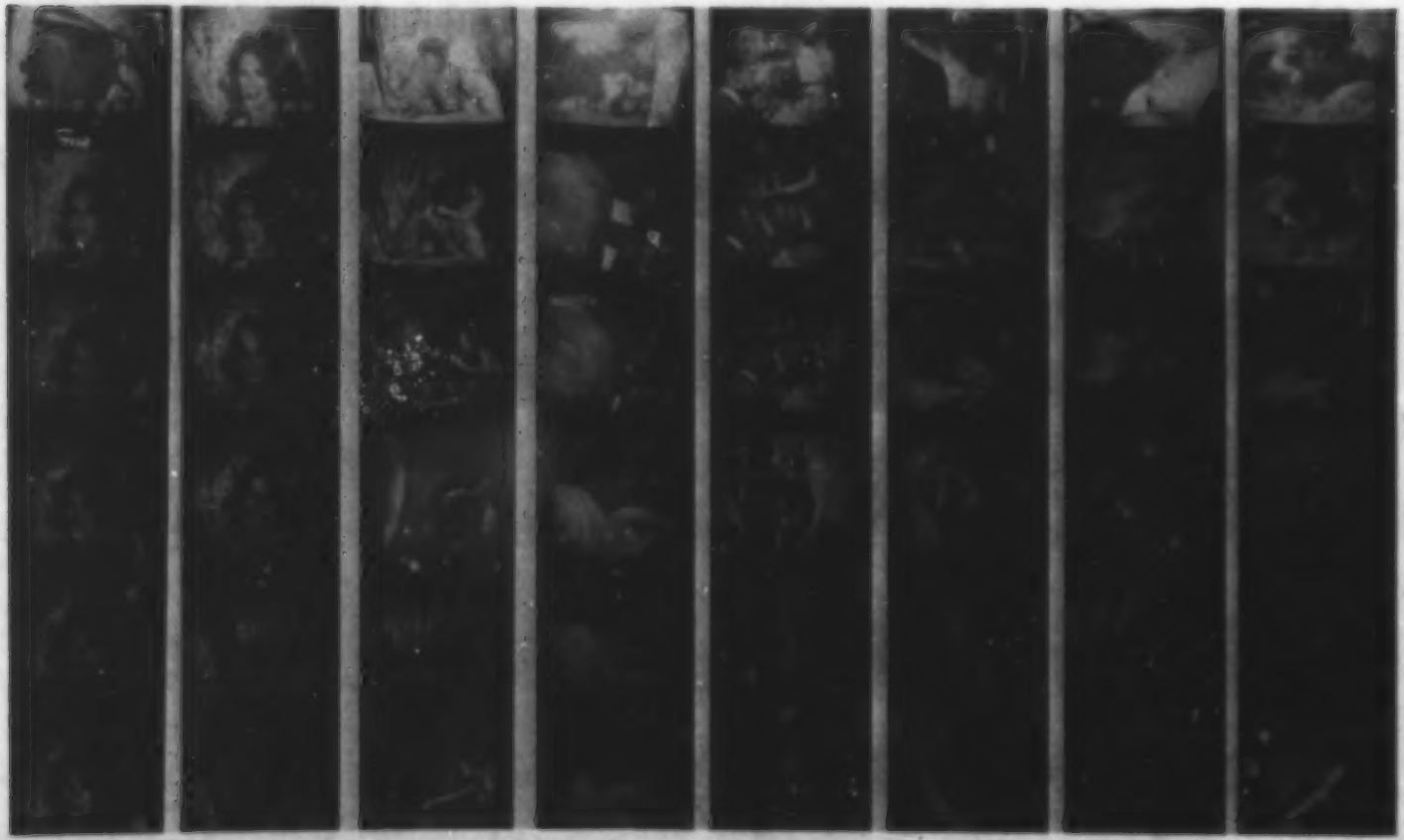
"INSIDE MARILYN CHAMBERS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 30483) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 18, 1976)

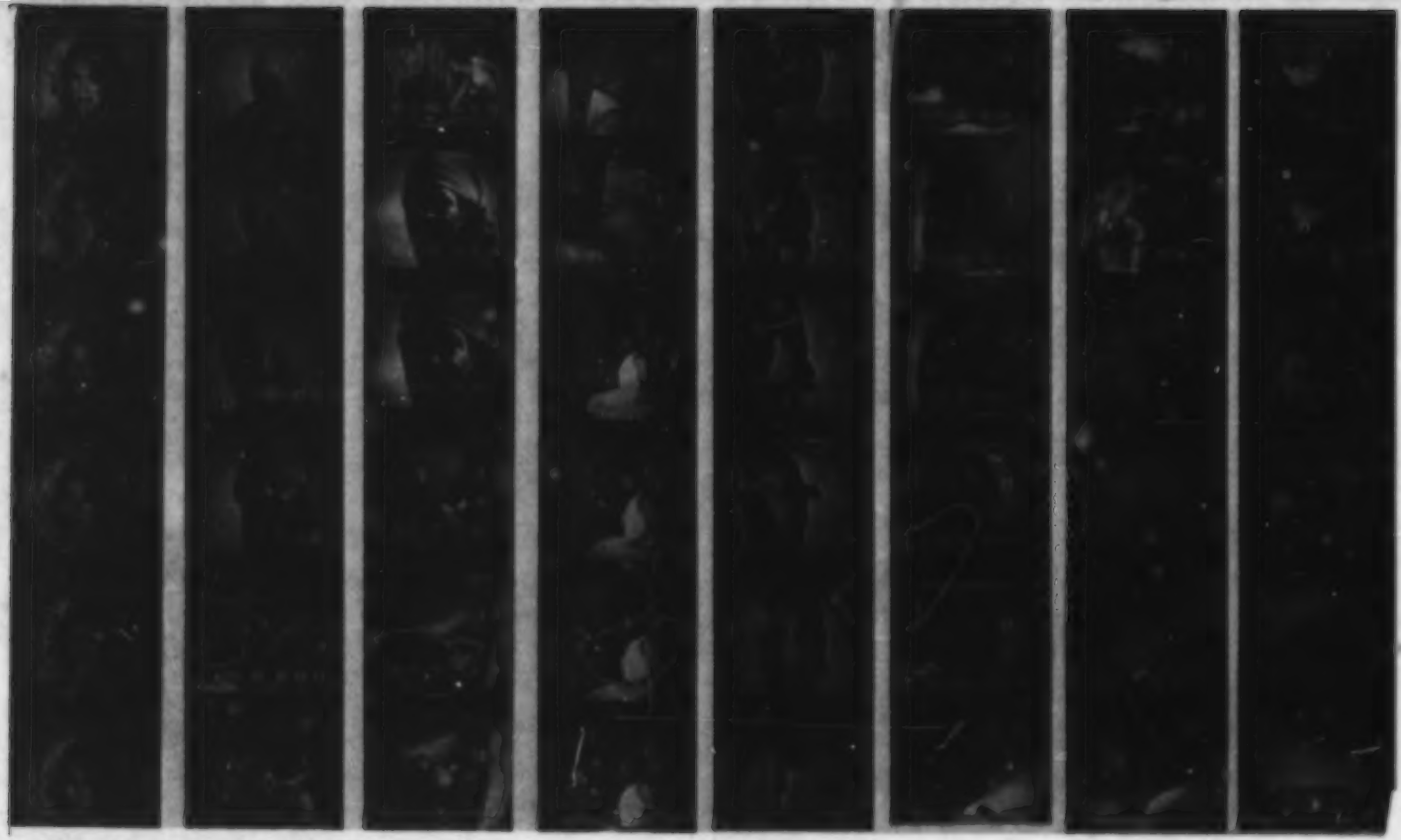




"INSIDE MARILYN CHAMBERS"
PART 4 OF 14 PARTS
(16:46-18:41) INTERVIEWS CONTINUE. SCENES FROM "BEHIND THE GREEN DOOR." (18:45-21:04) DEPICT KEYES ENGAGING IN SEXUAL INTERCOURSE. (21:07-22:17) ANOTHER MALE IS INTERVIEWED. ALSO JOHNNY KEYES AND MARILYN CHAMBERS ARE INTERVIEWED.

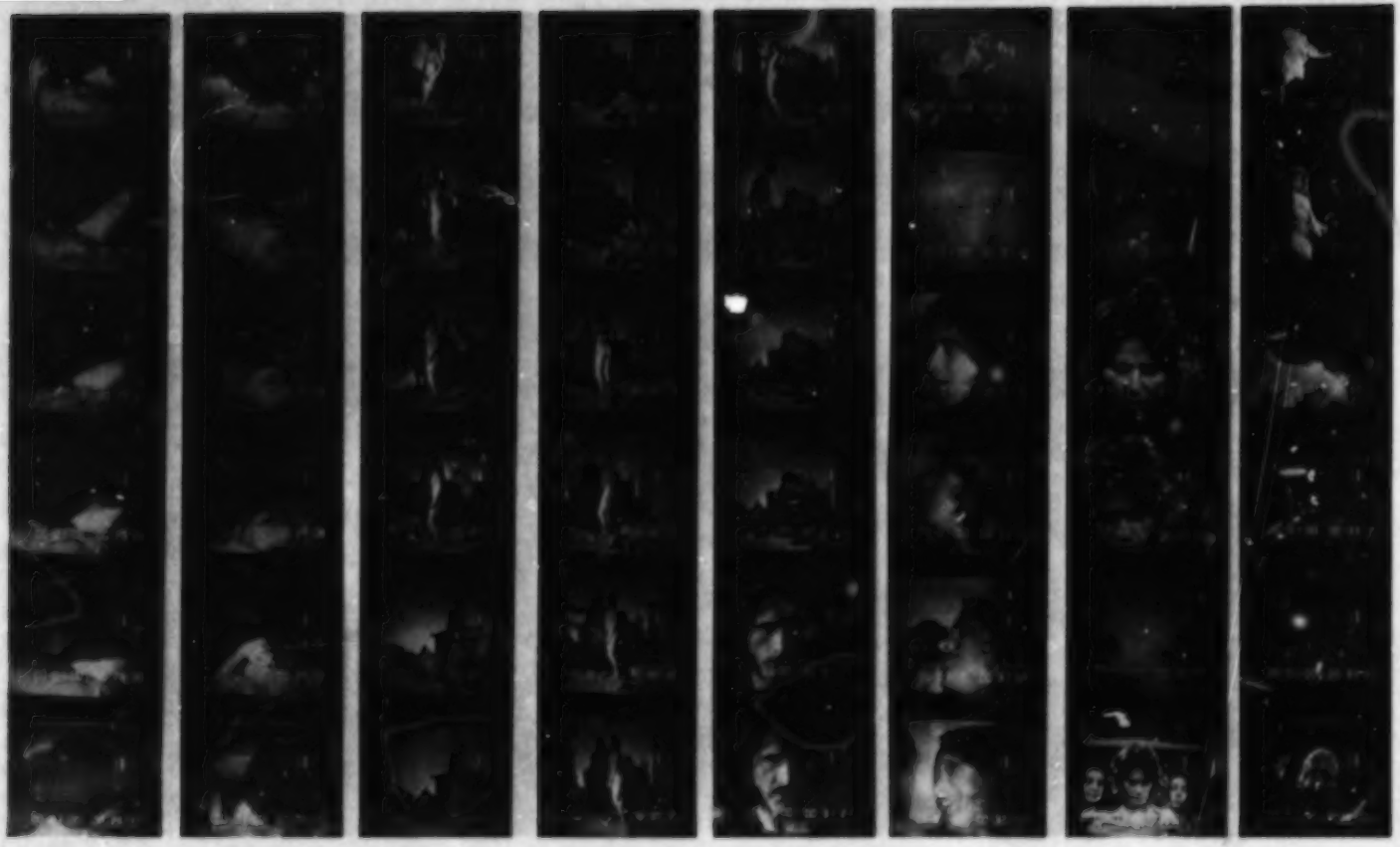
"INSIDE MARILYN CHAMBERS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 30483) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 18, 1976).





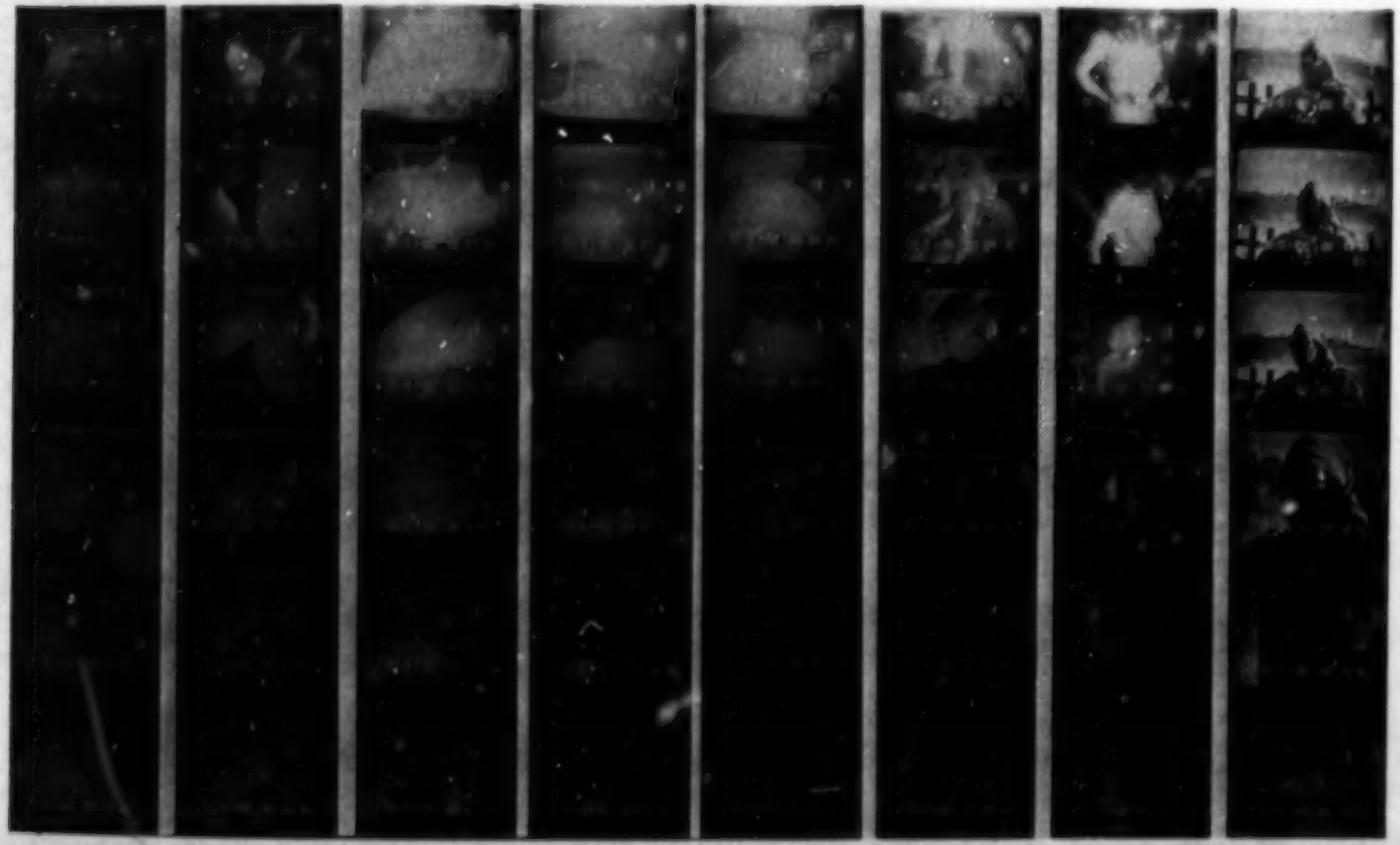
"INSIDE MARILYN CHAMBERS"
PART 5 OF 14 PARTS
(22:21-23:13) KEYES AND MARILYN CHAMBERS CONTINUE TALKING. (23:16-26:42) SHOW KEYES, CHAMBERS AND ANOTHER FEMALE IN BED. CHAMBERS LEAVES THE BED AND THE OTHER FEMALE ENGAGES KEYES IN FELLATIO. MARILYN CHAMBERS FELLATES JOHNNY KEYES. (26:45-27:52) SEXUAL INTERCOURSE.

"INSIDE MARILYN CHAMBERS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 30483) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 18, 1976).

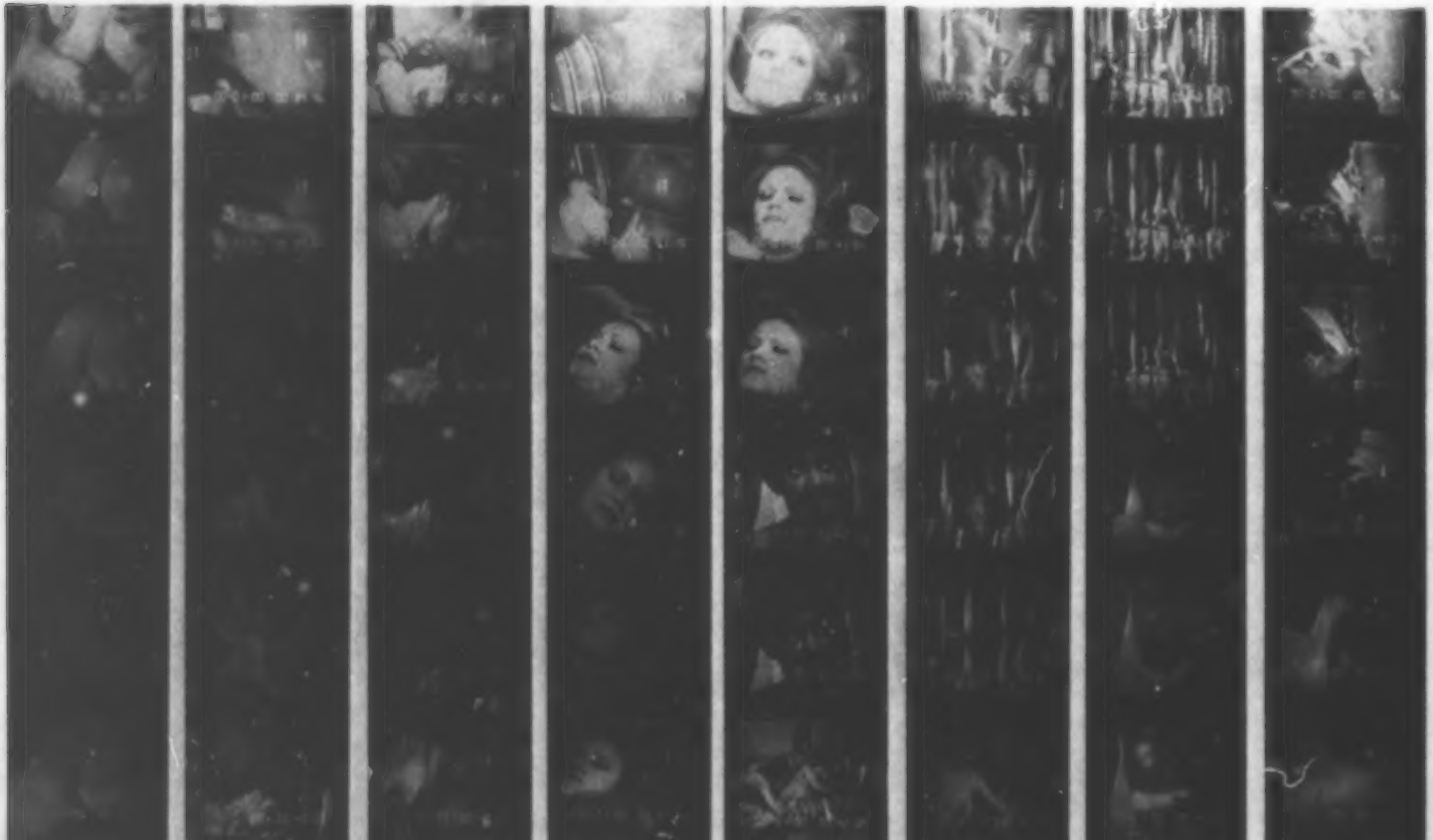


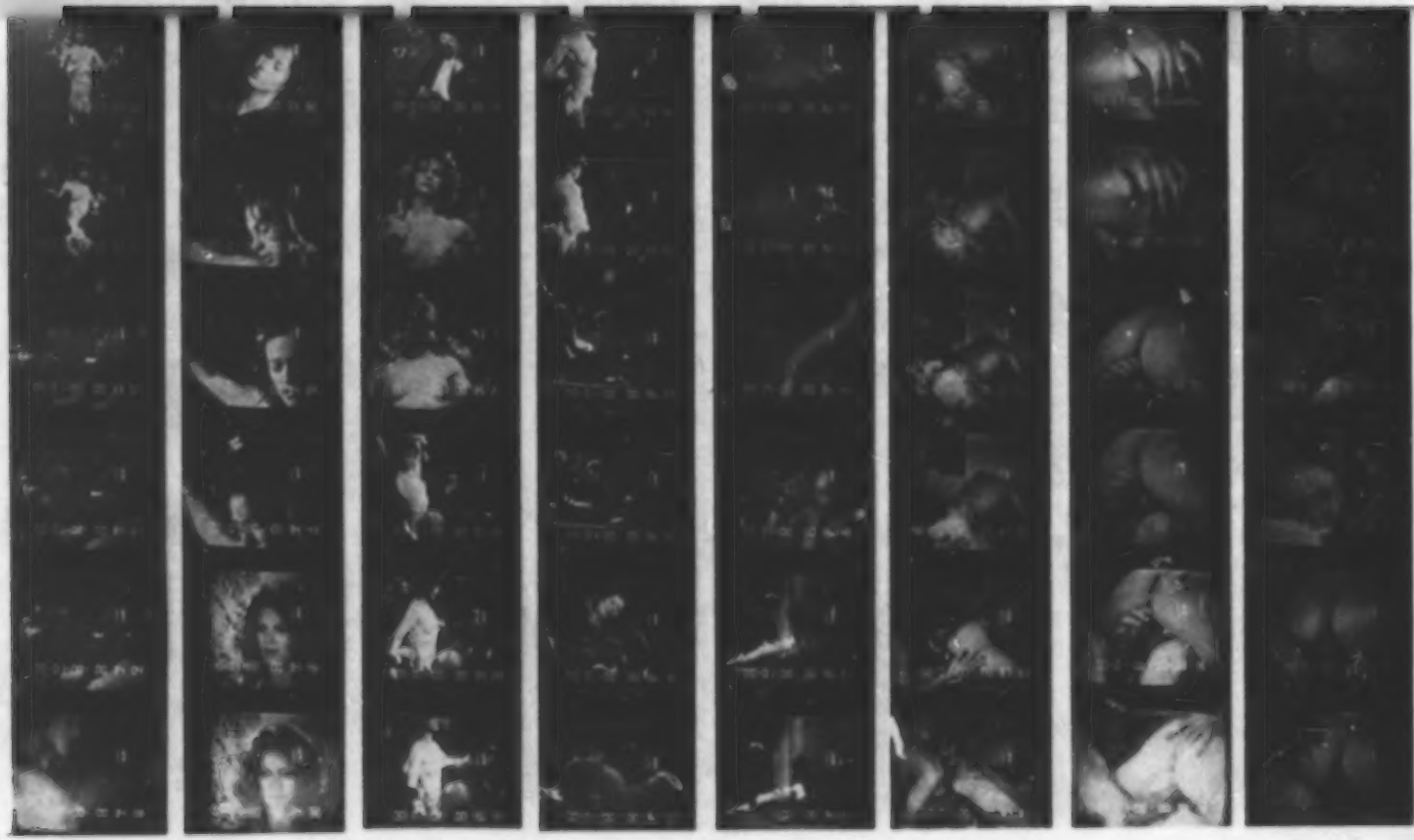
"INSIDE MARILYN CHAMBERS"
PART 6 OF 14 PARTS
(27:55-29:19) SEXUAL INTERCOURSE. (29:22-30:04) DEPICT ARTIE MITCHELL DIRECTING PORNOGRAPHIC SCENES. (30:07-31:14) SCENES NOT SHOWN IN "RESURRECTION OF EVE" DEPICTING NUDE ACTORS. (31:17-32:02) ANOTHER MALE ACTOR SHOWN AND MARILYN CHAMBERS CONTINUES INTERVIEW. (32:06-33:26) SCENES FROM "BEHIND THE GREEN DOOR."

"INSIDE MARILYN CHAMBERS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 30483) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 18, 1976).

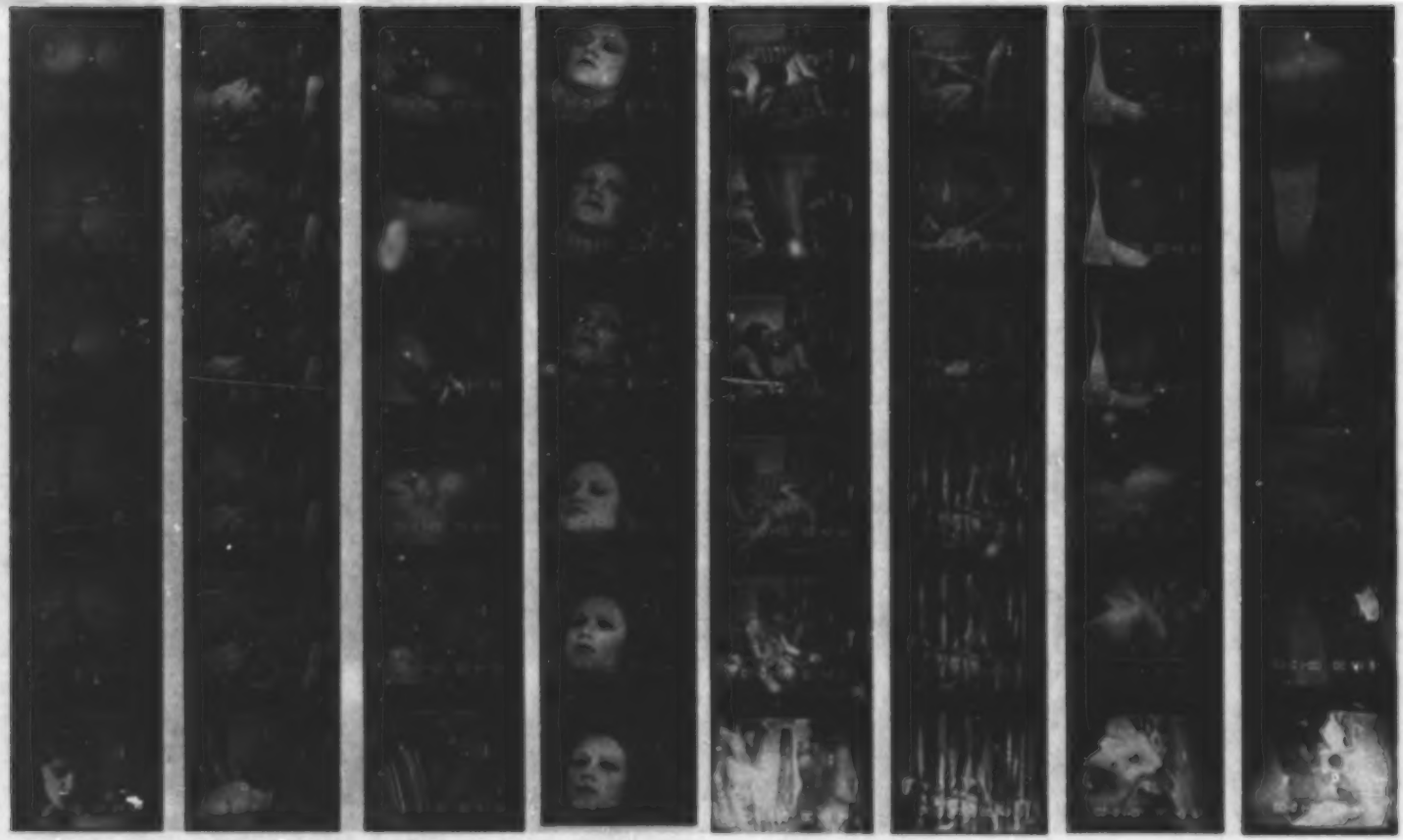


"INSIDE MARILYN CHAMBERS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 30483) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 18 1976).



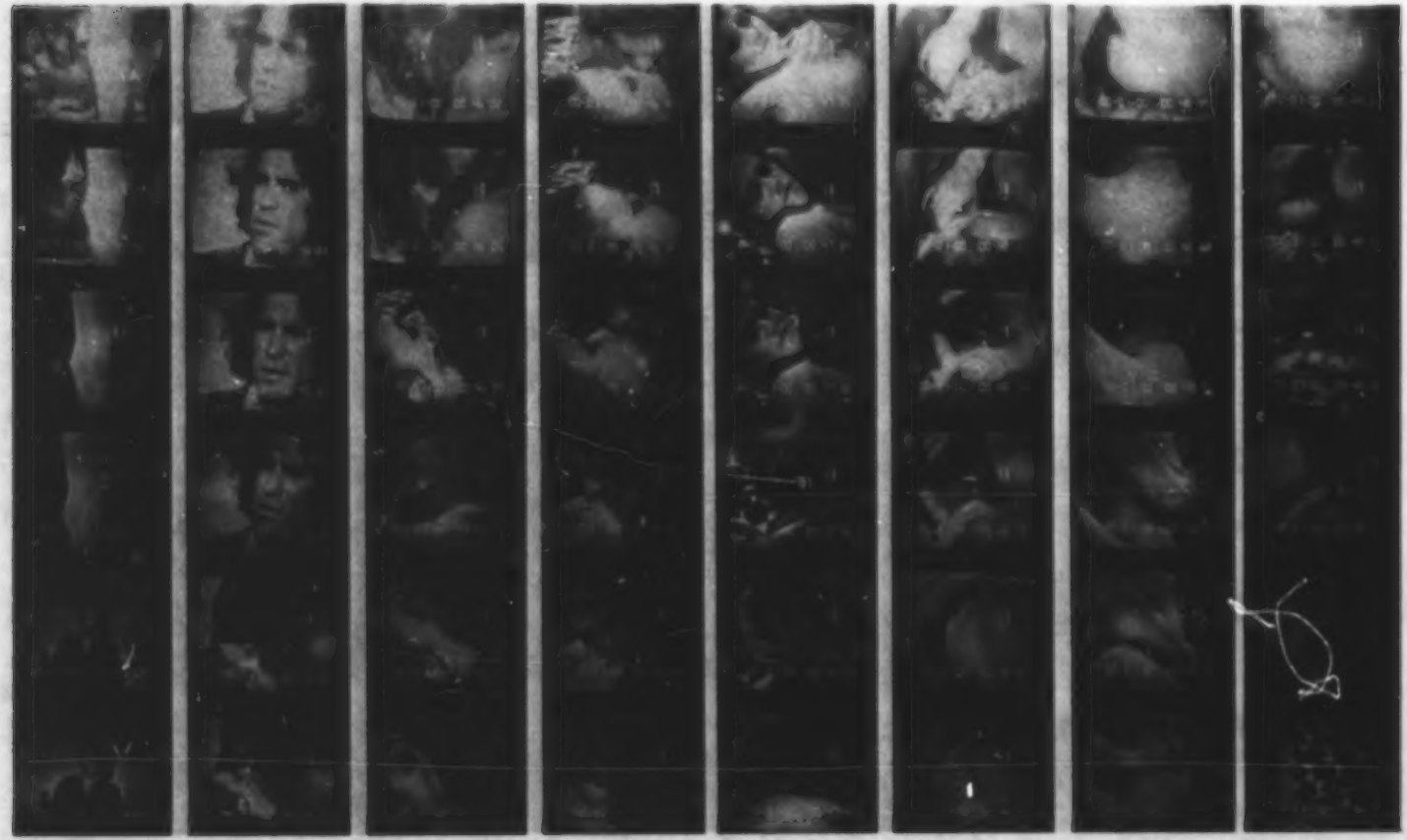


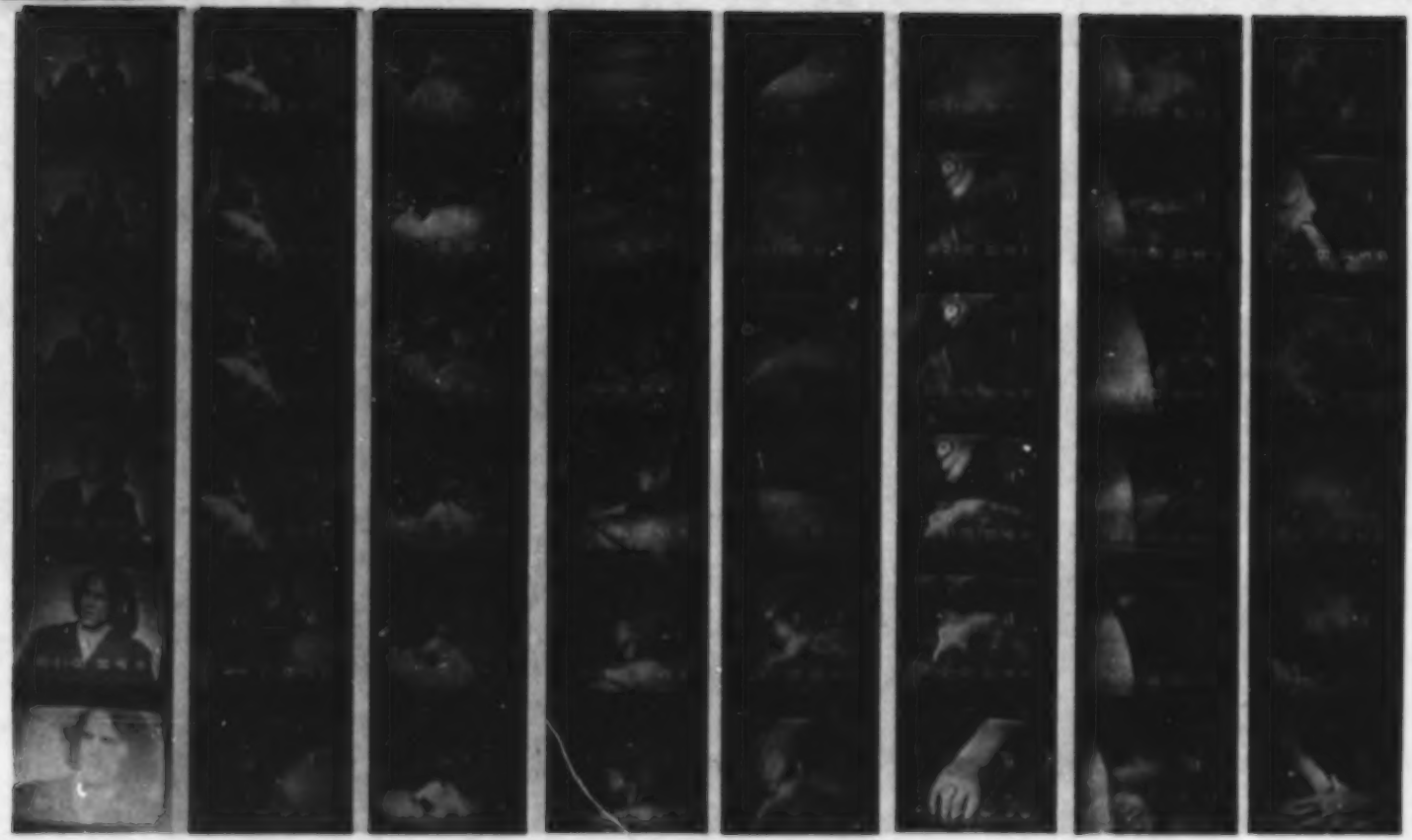
"INSIDE MARILYN CHAMBERS"
PART 7 OF 14 PARTS
(33:29-34:43) SCENE FROM "BEHIND THE GREEN DOOR" CONTINUES. (34:46-39:00) INTERVIEW OF MARILYN CHAMBERS AND SCENES OF HER ENGAGED IN SEXUAL INTERCOURSE, CUNNILINGUS, AND SIMULTANEOUS SEXUAL INTERCOURSE AND SODOMY.



"INSIDE MARILYN CHAMBERS"
PART 8 OF 14 PARTS
(39:04-41:13) SEXUAL INTERCOURSE AND FELLATIO. (41:16-44:35) SHOW VARIOUS NUDE SCENES, CUNNILINGUS BETWEEN TWO FEMALES, PLUS SEXUAL INTERCOURSE BETWEEN A MALE AND FEMALE FROM THE REAR.

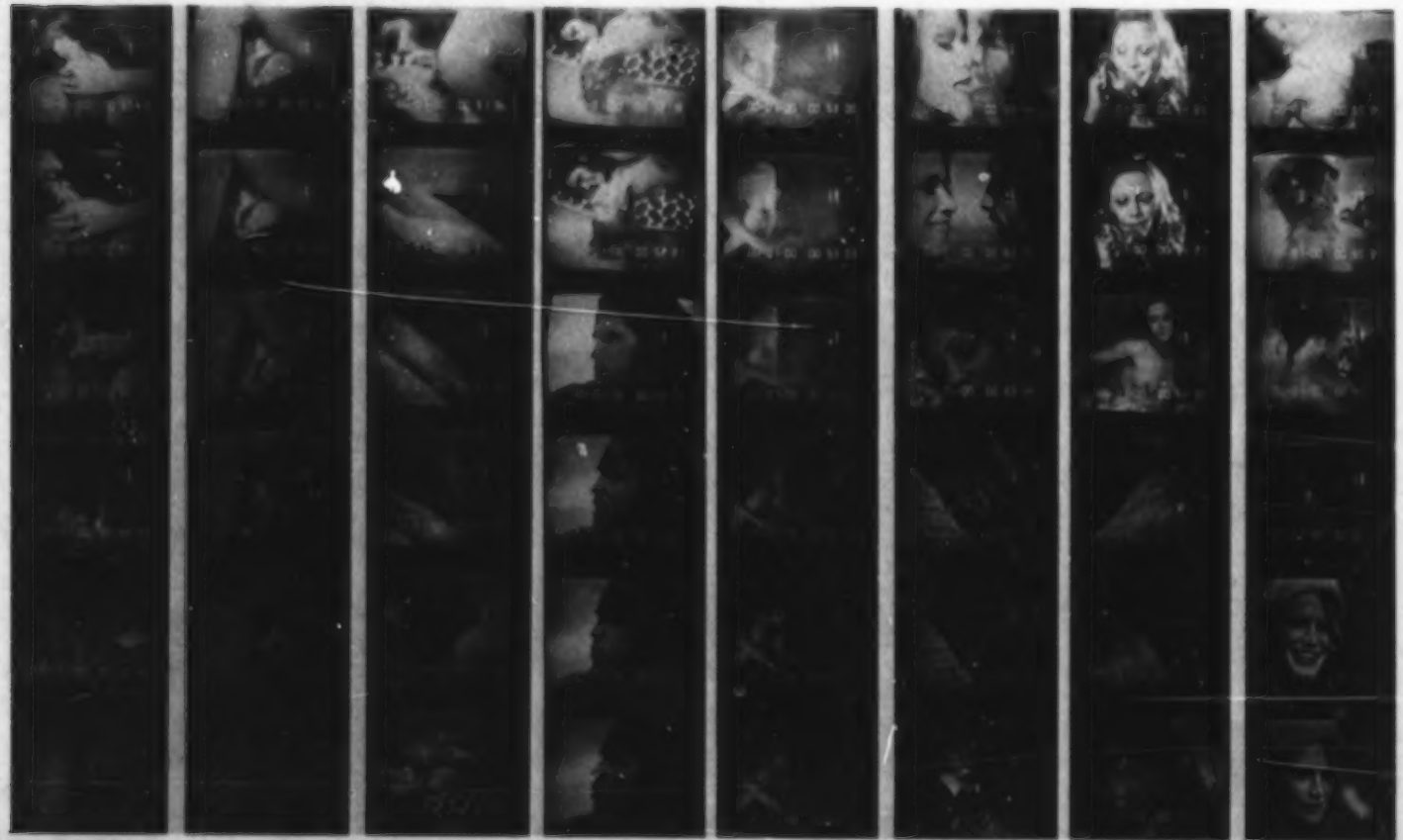
"INSIDE MARILYN CHAMBERS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 30483) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 18 1976).

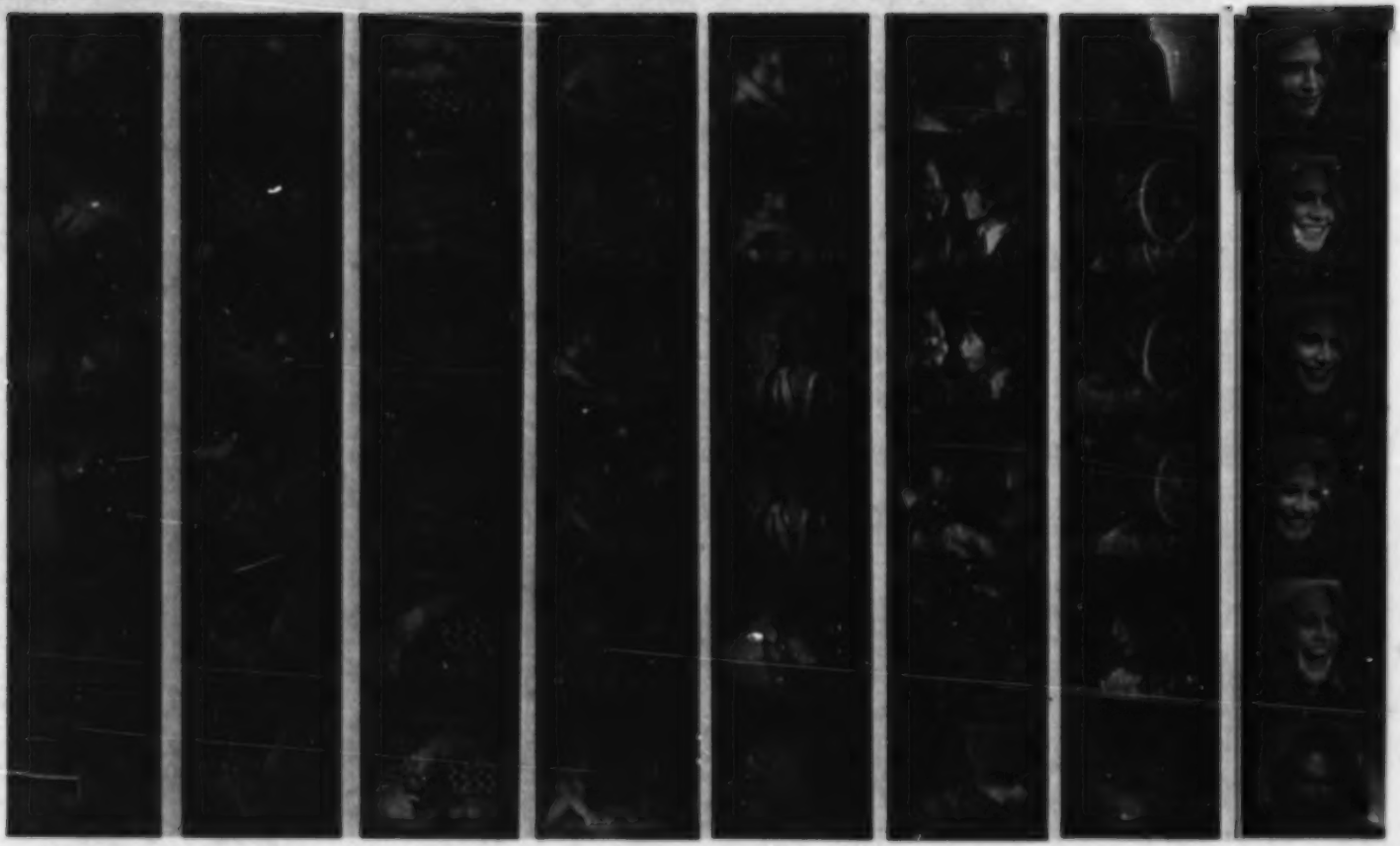




"INSIDE MARILYN CHAMBERS"
PART 9 OF 14 PARTS
(44:38-44:49) MARILYN CHAMBERS AND A MALE ENGAGED IN FELLATIO AND CUNNILINGUS. (44:52-45:30) MALE ACTOR IS INTERVIEWED. (45:34-50:09) MALE ACTOR AND CHAMBERS ENGAGE IN SEXUAL INTERCOURSE, BREAST LICKING AND FELLATIO.

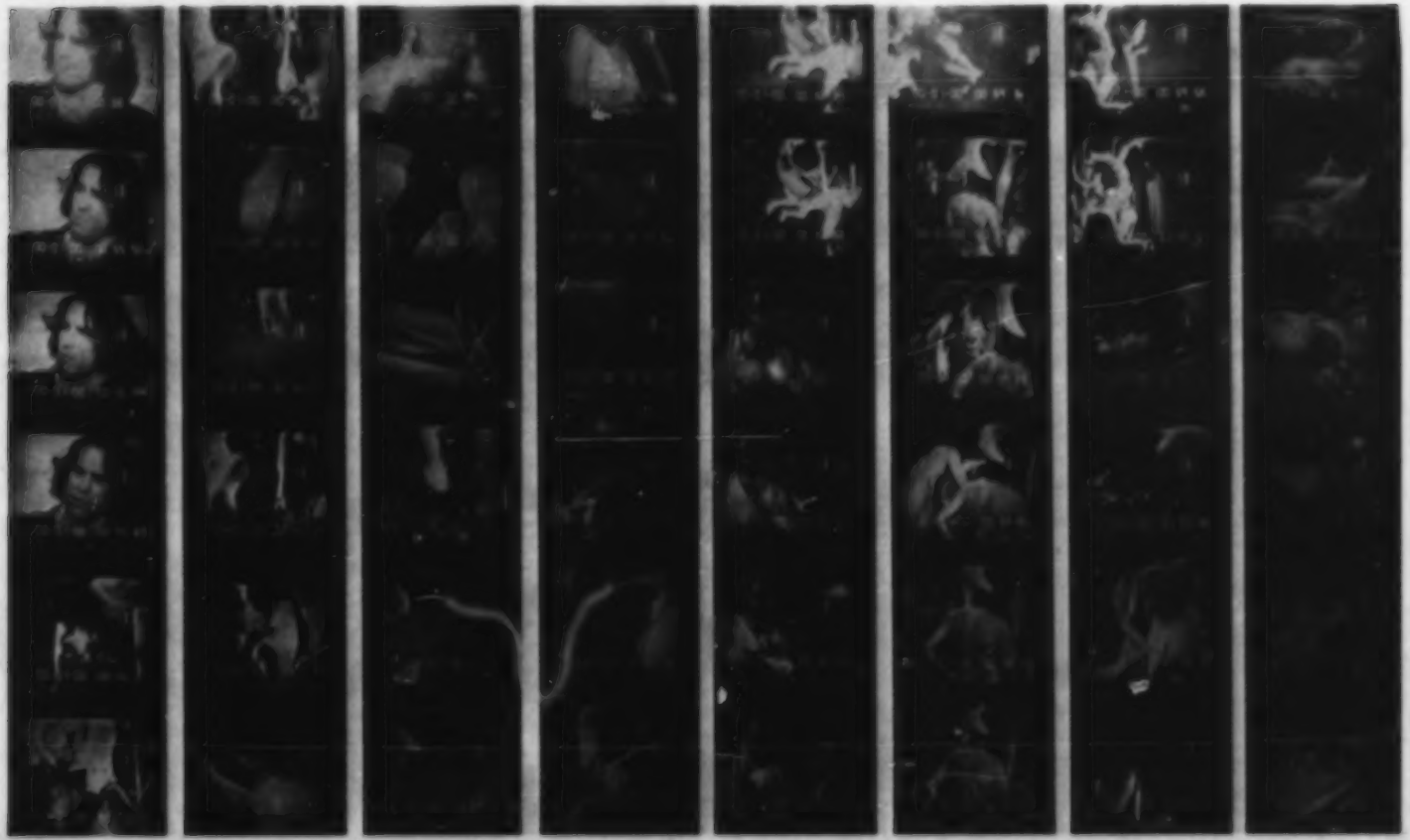
"INSIDE MARILYN CHAMBERS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 30483) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 18, 1976).

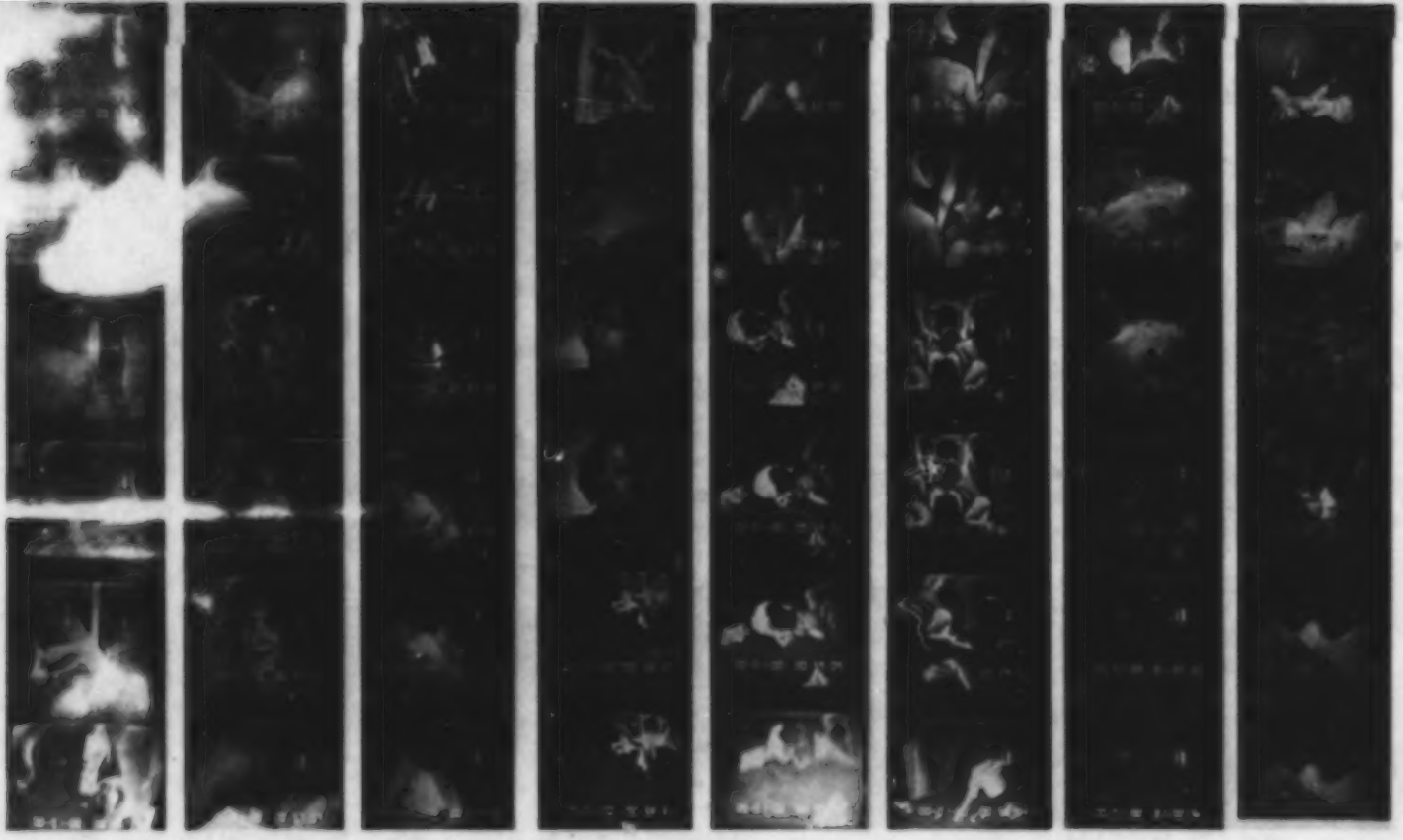




"INSIDE MARILYN CHAMBERS"
PART 10 OF 14 PARTS
(50:12-52:21) MARILYN CHAMBERS CONTINUES FELLATIO, CUNNILINGUS, AND SEXUAL INTERCOURSE SCENES. (52:25-52:35) MALE ACTOR STILL BEING INTERVIEWED. (52:39-54:27) SEXUAL SCENES CONTINUE WITH MARILYN CHAMBERS INTERVIEWED AND TALKING ON THE PHONE. (54:30-55:43) MARILYN SHOWN NUDE LOOKING IN A MIRROR AND LAUGHING.

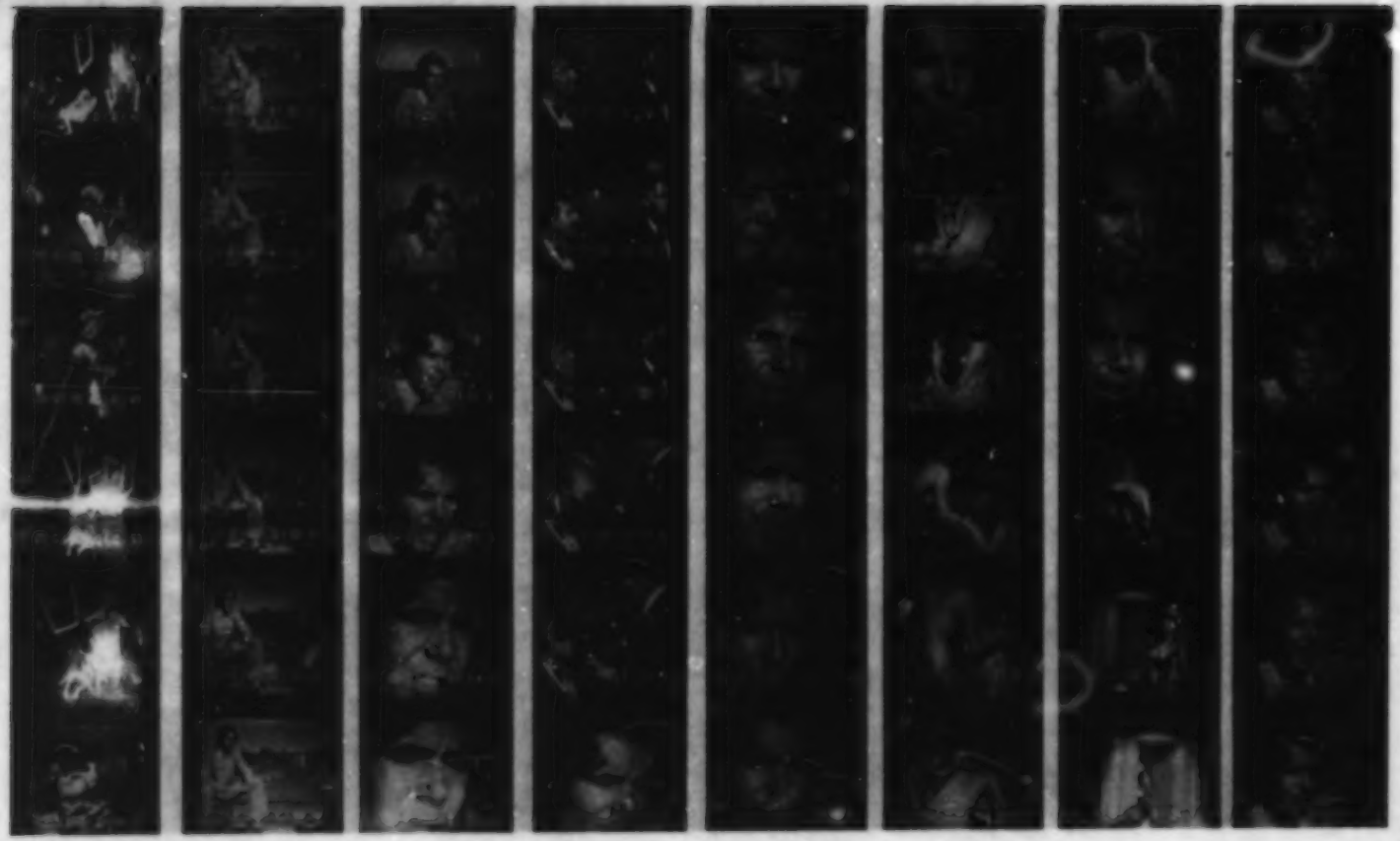
"INSIDE MARILYN CHAMBERS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 30483) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 18, 1976).





"INSIDE MARILYN CHAMBERS"
PART 11 OF 14 PARTS
(55:47-57:04) THE MALE ACTOR TALKS AS MARILYN CHAMBERS' INTERVIEW CONTINUES. (57:07-101:18) VARIOUS SCENES OF MARILYN CHAMBERS ENGAGING OTHERS IN SEXUAL ACTIVITY.

"INSIDE MARILYN CHAMBERS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 30483) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 18 1976).

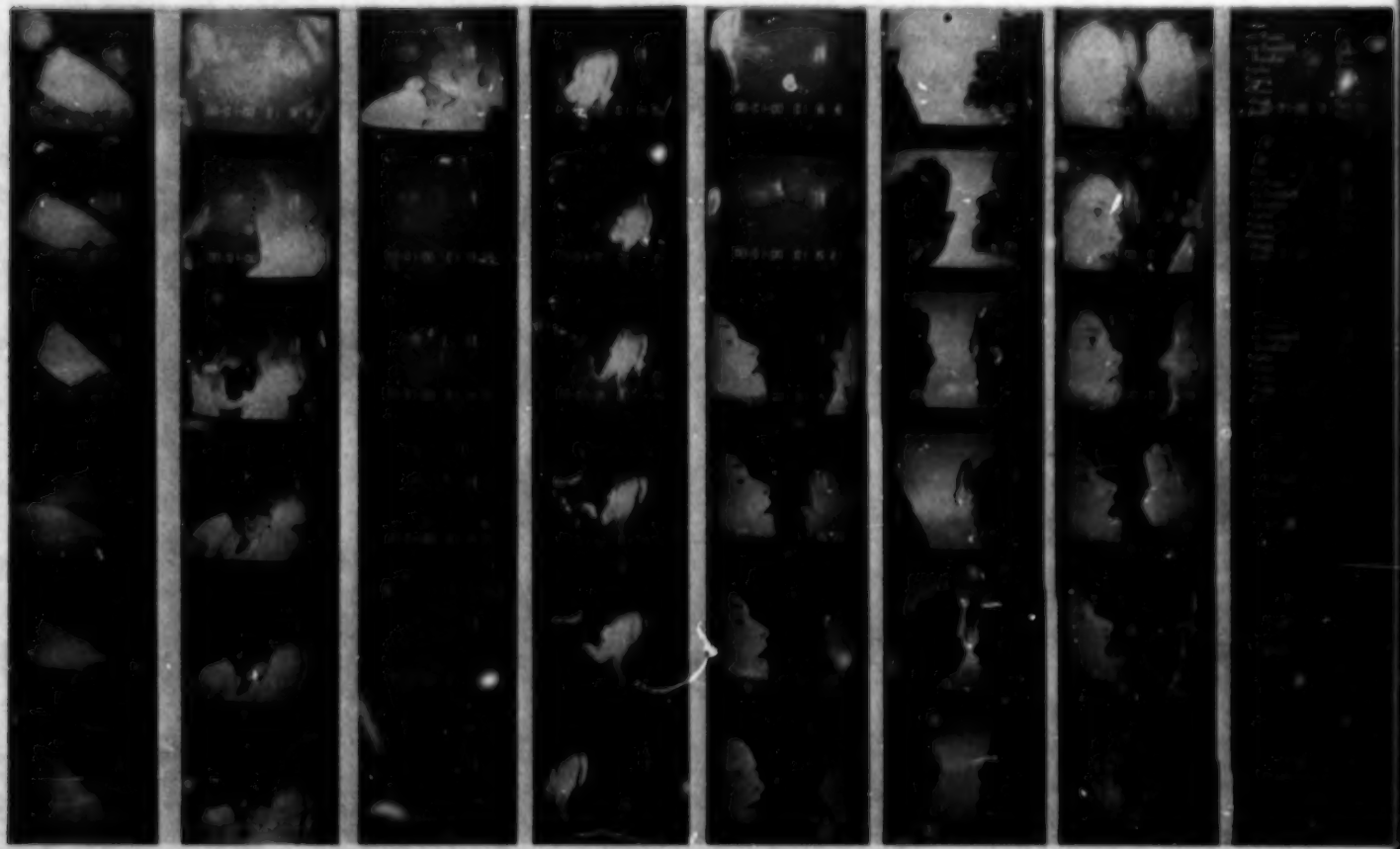


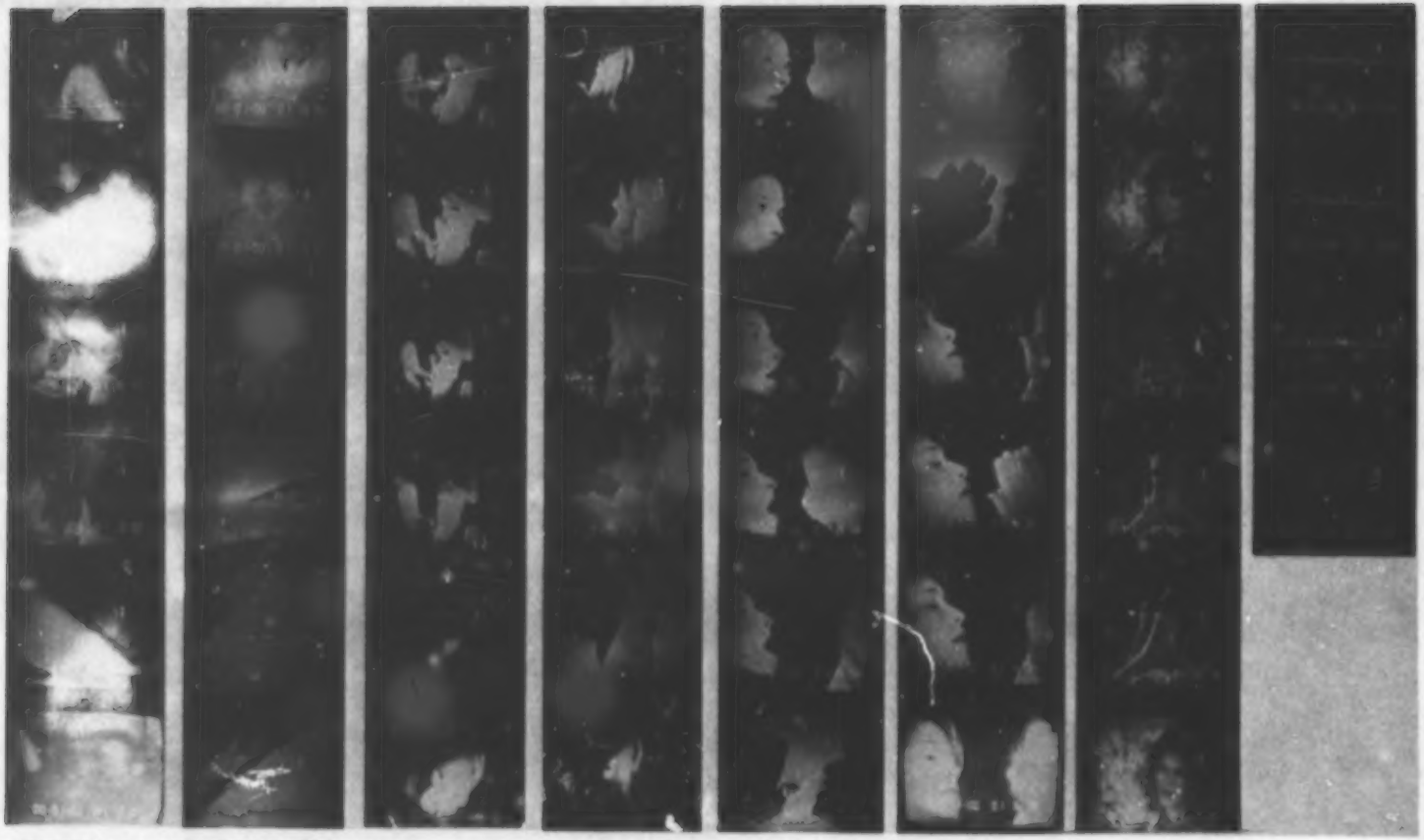
"INSIDE MARILYN CHAMBERS"
PART 12 OF 14 PARTS
(B01:21-B02:03) FELLATIO SHOWN AS INTERVIEWS CONTINUE OF ACTORS INVOLVED WITH CHAMBERS IN "BEHIND THE GREEN DOOR." (B02:47-B06:52) MALE ACTOR CONTINUES TO DISCUSS SCENES OF "BEHIND THE GREEN DOOR."

"INSIDE MARILYN CHAMBERS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 30483) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 18, 1976).

"INSIDE MARILYN CHAMBERS"
PART 13 OF 14 PARTS
(206:56-212:27) DEPICT MARILYN CHAMBERS AND MALE ACTOR BEING INTERVIEWED SEPARATELY. NUDE SCENES FROM "BEHIND THE GREEN DOOR" ARE SHOWN.

"INSIDE MARILYN CHAMBERS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 30483) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 18,





"INSIDE MARILYN CHAMBERS"
PART 14 OF 14 PARTS
(1:12:30-1:17:55) CONTINUED SCENES FROM "BEHIND THE GREEN DOOR." - THE TRAPEZE SCENES WITH FELLATIO AND CUNNILINGUS. EJACTULATION. CLOSING SCENE OF MARILYN CHAMBERS TALKING, THEN SHOWN NUDE AS CREDITS ARE SHOWN AS FILM ENDS.

Office - Supreme Court, U.S.
FILED
JUN 14 1982
ALEXANDER L. STEVAS,
CLERK

No. 81-2096

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1981

JAMES J. CLANCY, GORDON BRICKEN, JAMES E. WARD, DAVID L. BRANDT, and DAVID F. ORTIZ,
Petitioners,

vs.

JARTECH, INC., ANATUNA, INC., CINEMA 7, INC. and MOOKS, INC., all California Corporations,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

ROBERT L. THORP
1524 California Street
San Francisco, CA 94115
(415) 441-3492
Attorney for Respondents

BOWNE-PERMAR WALSH • 100 NINTH ST. • S.F., CA 94103 • (415) 864-2000

QUESTION PRESENTED

Whether defendants in a copyright infringement suit may counterclaim against the plaintiffs for declaratory judgment that all films produced by the plaintiffs are subject to seizure and destruction because of obscenity per se?

LIST OF PARTIES

The petitioners are James J. Clancy, a private attorney who has specialized in bringing civil actions to stop exhibition of motion pictures, and Gordon Bricken, James E. Ward, David L. Brandt and David F. Ortiz, who, at all times relevant to this lawsuit, were members of the City Council of the City of Santa Ana, Orange County, State of California.

Respondents are Jartech, Inc., registered copyright holder of the motion picture, "Behind the Green Door"; Anatuna, Inc., registered copyright holder of the motion picture, "Resurrection of Eve"; Cinema 7, Inc., copyright holder of the motion pictures, "Sodom and Gomorrah", "The Autobiography of a Flea" and "Inside Marilyn Chambers"; and Mooks, Inc., copyright holder of the motion picture, "C.B. Mamas". All these respondents are California corporations, and all are controlled by James L. Mitchell and Artie J. Mitchell of San Francisco, California.

TABLE OF CONTENTS

	Page
Question presented	i
List of parties	i
The opinion below	1
Jurisdiction	2
Constitutional and statutory provisions involved	2
Statement of the case	2
The petition seeks a moral rather than legal decision	3
Conclusion	5

TABLE OF AUTHORITIES CITED

Cases

	Page
Miller v. California (1973) 413 U.S. 15	4
Paris Adult Theater I v. Slaton (1973) 413 U.S. 49	4

United States Constitution

Amendment I	2

Statutes

19 U.S.C. Section 1305(a)	5
28 U.S.C. Section 1254(1)	2

No. 81-2096

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1981

JAMES J. CLANCY, GORDON BRICKEN, JAMES E. WARD, DAVID L. BRANDT, and DAVID F. ORTIZ,
Petitioners,

VS.

JARTECH, INC., ANATUNA, INC., CINEMA 7, INC. and MOOKS, INC., all California Corporations,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

THE OPINION BELOW

The opinion of the Court of Appeals for the Ninth Circuit is reported at 666 F.2d 403, and a copy is attached to the petition as Appendix A-1.

JURISDICTION

The opinion of the Court of Appeals for the Ninth Circuit was filed on January 25, 1982. On April 12, 1982, Justice Rehnquist signed an order extending the time for filing a petition for writ of certiorari to and including May 10, 1982. Petitioners invoke this Court's jurisdiction under 28 U.S.C. Section 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

STATEMENT OF THE CASE

This is the third of three petitions brought in this copyright infringement suit. The other two are No. 81-2094, dealing with the defense of obscenity, and No. 81-2095, dealing with attorney's fees. This petition concerns the counterclaim that all the films produced by the Mitchell Brothers should be found contraband, seized and destroyed.

In October, 1976, the respondents here ("The Mitchell Brothers") sued James J. Clancy and five members of the City Council of Santa Ana, California, for copyright infringement. Clancy had developed a technique for making "Time and Motion Studies," as he terms them (see the examples attached as Appendix D to the petition) by having an agent use a specially modified motion picture

camera and a tape recorder to film and record the motion pictures being exhibited at the Mitchell Brothers Santa Ana Theatre.

The defendants counterclaimed, seeking a determination that the motion pictures, including an additional one which had been produced after the lawsuit was filed, were obscene *per se*, and thus to be seized and all prints destroyed by order of the court.

Before the matter went to the jury the trial judge bifurcated the trial, reserving matter of the counterclaim to himself. In November, 1979, eleven months after the jury verdict, the trial court dismissed the counter-claim because there was no longer a controversy between the parties, and alternatively that the counter-claim failed to state a cause of action and the court was without jurisdiction to order seizure and destruction of the films.

The Ninth Circuit upheld this ruling.

THE PETITION SEEKS A MORAL RATHER THAN LEGAL DECISION

A careful reading of the petition shows that it seeks not a determination of what the law is, but rather what the petitioners believe the law should be. The summary of argument begins:

> "The recent appearance of hard-core pornographic films on television channels and in local neighborhoods in video-cassette form *should* make this Ninth Circuit copyright decision granting copyright protection to such films, a matter of great concern to this Court and a substantial federal question." [Emphasis supplied.] Petition, page 23.

Whether or not the petitioners believe there should be a substantial federal question here, they make no case that there actually is one.

The counterclaim seeks a declaration that the films produced by the Mitchell Brothers are so offensive as to be obscene as a matter of law, so that no fact issue is involved (and of course, no right to a trial by jury). For the petitioners it then follows that since the films are unarguably obscene, the district court has jurisdiction to seize them, and to order all prints destroyed.

The argument in support is actually a long series of attempts at misdirection. As an example, the trial court found that there was no controversy between the parties, and concluded that it was without jurisdiction to make a declaratory judgment on the obscenity *vel non* of the films. At pages 35 and 36 of the petition, it is urged that the *identical* [their emphasis] issue is presented in the first of these three petitions, and incorporate those arguments by reference, citing pages 44-55 of the petition in 81-2094. But those pages say nothing about lack of controversy, but rather speak of *per se* obscenity.

There is no such thing as *per se* obscenity. The determination of whether or not a work is obscene is one of fact. *Miller v. California* (1973) 413 U.S. 15; *Paris Adult Theater I v. Slaton* (1973) 413 U.S. 49.

Further, there is no statutory or case authority for the proposition that a private attorney and a group of members of a city council, acting as private citizens, may bring suit in a federal district court for the destruction of all prints of a motion picture film. Petitioners cite the law

governing imports (19 U.S.C. Section 1305(a), but make no effort to bring themselves within its ambit.

The petition is without merit.

CONCLUSION

For the foregoing reasons it is respectfully requested that the petition for writ of certiorari be denied.

ROBERT L. THORP
Attorney for Respondents

Office - Supreme Court, U.S.
FILED
AUG 19 1982

No. 81- 2096

In the Supreme Court of the United States

October Term, 1981

JAMES J. CLANCY, GORDON BRICKEN, JAMES E. WARD, DAVID L. BRANDT, and DAVID F. ORTIZ,

Petitioners,

v.

JARTECH, INC., ANATUNA, INC., CINEMA 7, INC., MOOKS, INC., all California corporations, JAMES MITCHELL, ARTIE MITCHELL, and MITCHELL BROTHERS FILM GROUP, a general partnership,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY BRIEF

James J. Clancy
9055 La Tuna Canyon Rd.
Sun Valley, CA 91352
(213) 352-2069

Attorney for Petitioners.

SUBJECT INDEX

Page

REPLY BRIEF..... 1

ARGUMENT..... 1

I

RESPONDENTS' "LIST OF PARTIES" AND "STATEMENT OF THE CASE" MISSTATES THE TRIAL FACTS..... 1

II

THE DETERMINATION OF WHETHER A WORK IS OBSCENE IS NOT PURELY ONE OF FACT, BUT IS RATHER A MIXED QUESTION OF LAW AND FACT.... 10

III

RESPONDENTS' CLAIM THAT THE PETITIONERS ARE "A PRIVATE ATTORNEY AND A GROUP OF MEMBERS OF A CITY COUNCIL, ACTING AS PRIVATE CITIZENS", HAS NO SUPPORT IN THE RECORD AND IS AN IMPROPER ARGUMENT..... 11

PROOF OF SERVICE..... 18

TABLE OF AUTHORITIES CITED

Cases

ARnebergh v. Zeitlin, 375 U.S. 957..... 10

U.S. v. Cutting and Still, 538 F.2d 835..... 10

U.S. v. 37 Photographs, 402 U.S. 363..... 15, 16

Zeitlin v. Arnebergh, 59 Cal.2d 901..... 10

CODES, RULES

Federal Rules of Civil Procedure
Section 13(a)..... 9
Section 41(a)(2)..... 4

Rules of the U.S. Supreme Court
Rule 22.5..... 1

United States Codes
19 U.S.C. Section 1305(a)..... 15, 16, 17

In the Supreme Court of the United States

October Term, 1981

JAMES J. CLANCY, GORDON BRICKEN, JAMES E. WARD, DAVID L. BRANDT, and DAVID F. ORTIZ,

Petitioners,

v.

JARTECH, INC., ANATUNA, INC., CINEMA 7, INC., and MOOKS, INC., all California corporations,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY BRIEF

Pursuant to U.S. Supreme Court Rule 22.5, Petitioners submit the following Reply Brief to Respondents' "Opposition to Petition for A Writ of Certiorari" in No. 81-2096.

I

RESPONDENTS' "LIST OF PARTIES" AND "STATEMENT OF THE CASE" MISSTATES THE TRIAL FACTS.

In their "Opposition to Petition for

A Writ of Certiorari" in each of case nos. 81-2094, 81-2095 and 81-2096, Respondent Corporations Jartech, Inc., Anatuna, Inc., Cinema 7, Inc. and Mooks, Inc. have correctly stated in their "List of Parties" that all four of the California Corporations are "controlled" by James L. Mitchell and Artie J. Mitchell of San Francisco, but have incorrectly stated that the only interest of the Respondent "Mooks, Inc." is as "copyright holder of the motion picture, "C.B. Mamas".

The record shows "Mooks, Inc." first appeared in the lawsuit when added as a party plaintiff in the first amended complaint, pursuant to an amendment which alleged that Mooks, Inc. had received from the Copyright Office a Certificate of Registration of a Claim to Copyright in the motion picture "The Autobiography of a Flea". The record also shows that Respondent Cinema 7, Inc. is not the

copyright holder of the motion picture "The Autobiography of a Flea", as the "List of Parties" states. See the Statement of Facts in the "Petition for A Writ of Certiorari" in No. 81-2094 (Re Judgment on the Verdict (for Defendants) Entered on Dec. 12, 1978 - C.A. 78-3087) at pages 7-8. See also paragraphs 21 through 25 of the First Amended Complaint for Copyright Infringement, filed Oct. 3, 1977, (C.T. 388-407) and C.T. 405-406, showing the Certificate of a Registration of a Claim to Copyright in "The Autobiography of a Flea" in the name of "Mooks, Inc.". The above is not a harmless misstatement of the record as to the Petition in No. 81-2096, as is hereinafter explained.

As is pointed out at page 12 of the "Petition for a Writ of Certiorari" in No. 81-2096 (Re Judgment on Counterclaim In Favor of Counter-Defendants entered Nov.

23, 1979 - C.A. 80-5016), the original complaint for copyright infringement was scheduled for trial on May 24, 1977, seven months after the original complaint was filed. On that date, the three corporations who were plaintiffs in the original complaint which involved three films (Jartech, Inc., Anatuna, Inc. and Cinema 7, Inc.) moved for a dismissal of the complaint pursuant to F.R.C.P. section 41(a)(2). The same was granted by the Court against the Petitioners' objections, but upon condition that the three corporations pay costs to the Petitioners, including an attorney's fee in the amount of $9,778.76. Faced with this conditional judgment, the Respondents changed their position and, instead, moved the trial court for an order to permit the filing of an amended complaint which would reinstate the copyright infringement lawsuit. In their "First Amended Complaint for

Copyright Infringement", filed by order of Court on Oct. 3, 1977 (C.T. 388), the original complaint was expanded. As part of the enlargement, Respondent "Mooks, Inc." was added as a fourth corporate plaintiff and alleged to be the holder of a Registration of A Claim to Copyright in a fourth film "The Autobiography of a Flea" (C.T. 392-393 and 405-406). The "First Amended Complaint for Copyright Infringement", however, failed and neglected to also include "Mooks, Inc." as the holder of a Registration of a Claim to Copyright in a sixth disputed film "C.B. Mamas", which Certificate indicates that Mooks, Inc. had published the film on Mar. 26, 1976, 18 months prior to the filing of the Amended Complaint, (See Plaintiffs' exhibit 6, described in detail at R.T. page 645, lines 3-13).

Thereafter, the Petitioners filed their counterclaim in which they alleged

that a Certificate for Registration of a Claim to Copyright in the disputed motion picture "C.B. Mamas" had also been issued to the new party plaintiff (Mooks, Inc.), and that the federal issues as to "C.B. Mamas" should also be decided under the Plaintiffs' counterclaim.

At page 3 of their "Opposition To Petition For a Writ of Certiorari" in No. 81-2096, Respondents also erroneously state under the heading "Statement of the Case":

> "The defendants counterclaimed, seeking a determination that the motion pictures, including an additional one which had been produced after the lawsuit was filed, were obscene per se, . . ." (our emphasis) 1/

1/ Petitioners submit that the Respondents' failure to include "Mooks'" copyright claim in the motion picture "C.B. Mamas" in the "First Amended Complaint for Copyright Infringement" can be explained by comparing the photographic content of the time and motion study for "C.B. Mamas" (see Petition for a Writ of Certiorari in 81-2096 at Appendix D-135 through D-155) with the photographic content of the time and motion studies for the five remaining Mitchell Brothers' films. (See Petition for a Writ of Certiorari at Appendix D-1 through D-134 and D-156 through D-

As noted above, the film referred to is "C.B. Mamas" and the Certificate of Registration of a Claim to Copyright on that film had been issued to Mooks, Inc. one year before the Plaintiffs filed their "First Amended Complaint for Copyright Infringement" which added "Mooks, Inc." as the holder of the certificate on "The Autobiography of a Flea". See paragraph 12 of Defendants' Amended Counterclaim (C.T. 518 at line 26, et seq.) and Plaintiffs and Counter-Defendants' Answer to Amended Counter-claim, admitting that fact. (C.T. 539, line 7.)

Although the trial court thereafter issued its order and made the film "C.B.

185.) "C.B. Mamas" is pure, unadulterated hard-core pornography with no attempt to camouflage the product with a thin story line, as was done in the other 5 films. Respondents' reluctance to include "C.B. Mamas" in the "First Amended Complaint for Copyright Infringement" certainly cannot be attributed to the fact that "C.B. Mamas" "had been produced after the lawsuit was filed", as the above erroneous statement seems to infer, since the copyright claim in "C.B. Mamas" was one year old when the First Amended Complaint was filed.

Mamas" an issue in the lawsuit as to the new party plaintiff "Mooks, Inc." (C.T. 512), it thereafter removed that issue from the jury's determination and reserved it as an issue to be decided by the court. Later, the court decided that such issues did not need to be resolved and dismissed the counterclaim as moot. That dismissal is now before this Court in the Petition for A Writ of Certiorari herein in No. 81-2096 (Judgment re Counterclaim in Favor of Counter-Defendants entered Nov. 23, 1979 - C.A. 80-5016).

The consequence of the trial court's action, dismissing the counterclaim was to permit Mooks, Inc., which had voluntarily appeared as a party plaintiff in the First Amended Complaint, to entertain its action as a plaintiff as to the issues regarding the film "The Autobiography of a Flea", but to deny the defendants the right to adjudicate the same controverted issues as

to "C.B. Mamas".[2/]

The mischief of Respondents' misstatement in its "List of Parties" that the interest of "Mooks, Inc." was limited to that as the copyright holder of the film "C.B. Mamas", and its failure to recite the interest of Mooks, Inc. in the Registration of a Claim to Copyright in the film "The Autobiography of a Flea", is its misleading suggestion that the Counterclaim involving "C.B. Mamas" and Mooks, Inc. bore no relationship to the Plaintiffs in the "First Amended Complaint for Copyright Infringement".

2/ The trial court's ruling flies in the face of the public policy expressed in F.R.C.P. section 13(a) which requires a defendant to file as a counterclaim "any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require the presence of third parties of whom the court cannot acquire jurisdiction".

II

THE DETERMINATION OF WHETHER A WORK IS OBSCENE IS NOT PURELY ONE OF FACT, BUT IS RATHER A MIXED QUESTION OF LAW AND FACT.

Respondents are in error when they claim that "the determination of whether or not a work is obscene is one of fact". (See "Opposition To Petition for a Writ of Certiorari" at page 4.) The determination of obscenity is "a question of fact mixed with a determination of law". Zeitlin v. Arnebergh, 59 Cal.2d 901, 31 Cal.Rptr. 800 at 806, cert. denied in Arnebergh v. Zeitlin, 375 U.S. 957, 11 L.Ed.2d 315, 84 S.Ct. 445; U.S. v. Cutting and Still, 538 F.2d 835 at page 840, footnote 4. As further reply, Petitioners incorporate by reference the discussion on this issue in the Petition for a Writ of Certiorari in No. 81-2094 at Point IB under the heading "(B) THE TRIAL COURT ERRED IN DENYING THE DEFENDANTS' MOTION FOR A DIRECTED VERDICT. THE FIVE MOTION PICTURE FILMS ARE HARD-

CORE PORNOGRAPHY, AND, UNDER ANY STANDARD, ARE OBSCENE AS A MATTER OF LAW. THERE BEING NO GENUINE ISSUE OF FACT AS TO WHICH REASONABLE MINDS WOULD DIFFER REGARDING THE OBSCENITY OF THE FILMS, THE ISSUE IS SOLELY FOR THE DETERMINATION BY THE COURT."

III

RESPONDENTS' CLAIM THAT THE PETITIONERS ARE "A PRIVATE ATTORNEY AND A GROUP OF MEMBERS OF A CITY COUNCIL, ACTING AS PRIVATE CITIZENS", HAS NO SUPPORT IN THE RECORD AND IS AN IMPROPER ARGUMENT.

Respondents' argument at page 4 of their opposition that "there is no statutory or case authority for the proposition that a private attorney and a group of members of a city council, acting as private citizens, may bring suit in a federal district court for the destruction of all prints of a motion picture film" is improper, being an erroneous statement of the trial facts. There is not one shred of evidence that the attorney or members

of the Santa Ana City Council, who were named by the Respondents as defendants in the copyright infringement lawsuit, were acting as a "private attorney" or as "private citizens". The record is clear that such attorney had been employed by the full City Council and that the actions which were taken by the City Council were the actions of the full seven man City Council. See U.S. District Judge Waters' Findings of Fact 2 through 23, appearing at pages 24-29 of the Petition for a Writ of Certiorari in No. 81-2095. The reason that only the attorney and four members of the City Council were named by the Plaintiffs was due to the fact that Plaintiffs filed their federal action immediately after reading the news account in the Santa Ana Register that the attorney employed by the City Council had submitted evidence to the City Council at an executive session at which the four

City Council members herein named were in attendance. At that time, no action was taken by the City Council. The action which subsequently was taken on such evidence was by the full seven member City Council and after due deliberation. See "Petition for Writ of Certiorari" in No. 81-2095 at pages 14-16.

Further, the issue before this Court on the counterclaim is not that which is framed by the Respondents: "Whether a private attorney and a group of members of a city council, acting as private citizens, may bring suit in a federal district court for the destruction of all prints of a motion picture film". The issue is whether the individual members of a City Council when sued as individuals in a copyright infringement lawsuit for money damages to an "alleged" property interest, for actions taken by such defendants on official city business which is clearly

within the scope of their authority and as to which no claim of impropriety is being made, may independently counterclaim and, as counter-plaintiffs, establish the validity of the very issue which was before them in the official city action, which is complained against in the underlying lawsuit; namely, whether or not the motion picture films which were being exhibited were obscene under federal law and not susceptible of a property interest (contraband).

In its opinion on the copyrightability of obscenity, the Court of Appeals held that the obscenity of subject matter may not be raised as a defense to a claim of copyright infringement. (See Petition for a Writ of Certiorari in No. 81-2096 at Appendix A-9.) Petitioners submit that that court's erroneous analysis points up a dilemma which the Court of Appeals full opinion has created. If that analysis is

correct and the obscenity of the subject matter may not be raised by the City Councilmen as a defense in the copyright infringement action, then certainly due process requires that they be accorded the right to assert that issue independently in a declaratory judgment action by way of counterclaim (res judicata and estoppel) and the Court of Appeal's decision is incorrect on the counterclaim issue.

Respondents' argument in their opposition brief (at pages 4-5) that "Petitioners cite the law governing imports (19 U.S.C. section 1305(a), but make no effort to bring themselves within its ambit." is an attempt to cast a red herring across Petitioners' use of that citation. Petitioners' reference to 19 U.S.C. section 1305(a) appears in the Petition at page 57 and specifically refers to this Court's interpretation of 19 U.S.C. section 1305(a) in U.S. v. 37

Photographs, 402 U.S. 363 at 376 that matter which is obscene under federal law is "contraband" and the subject of forfeiture; as a foundation for Petitioners' further argument that "The federal statutes must be read in pari materia". (See Petition at pages 30 and 54). It is clear that Petitioners have asserted no rights under 19 U.S.C. section 1305(a) other than as a foundation for their "in pari materia" claim that the copyright statutes may not be interpreted so as to allow a copyright to obscene subject matter.

The "in pari materia" principle has a further application which is independent of the statutory interpretation which is to be given to the copyright statute in the copyright infringement lawsuit. Here, Petitioners draw an analogy and claim that they may prove, by declaratory judgment as plaintiffs in a counterclaim and as an

estoppel, that, contrary to the claim in the underlying copyright infringement lawsuit, the plaintiffs, under federal law, have no property interest which is susceptible of damage. Although Petitioners do not have "standing" under 19 U.S.C. section 1305(a), they do have the rights as Defendants and Counter-Plaintiffs in the copyright infringement action to establish an "estoppel" under the trial facts herein by a separate counterclaim.

Petitioners submit that the reply herein clearly establishes the need for plenary review of the issues which are framed by the Petitions for a Writ of Certiorari in Nos. 81-2094, 81-2095 and 81-2096.

August 9, 1982

Respectfully submitted

James J. Clancy
Counsel for Petitioners.

CERTIFICATE OF SERVICE

I, hereby certify that on this ____ day of August, 1982, the original and 40 copies of the within Reply Brief were deposited in the United States Post Office in Phoenix, Arizona, with first-class postage prepaid, and properly addressed to the Clerk of the United States Supreme Court.

I further certify that three (3) copies were also mailed, postage prepaid, to the below listed parties to the proceedings and that all parties required to be served have been served.

LAW OFFICE OF ROBERT L. THORP
1524 California Street
San Francisco, California 94109

James J. Clancy
9055 La Tuna Cyn. Rd.
Sun Valley, CA 91352

Counsel for Petitioner.